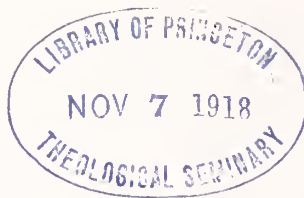
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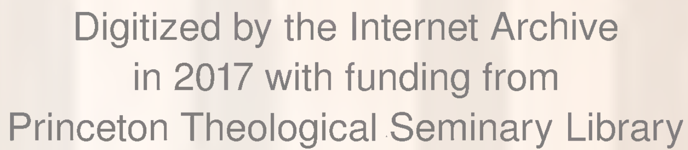
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CYCLOPEDIA of AMERICAN GOVERNMENT

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VOLUME I

ABATTOIRS—FINALITY

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INTRODUCTION

The need of a cyclopedia of American government has been made plain to the editors of this work by their own experience as students and teachers; they have often found trouble in readily obtaining brief and specific discussions of many aspects of the field. New political methods, new phrases, new facts and principles of social activity, as well as new governmental forms, are constantly coming into existence, and of many of these it is impossible to find mention in the ordinary handbook. The literature of the subject is large, but there is not in any convenient form a systematic and fairly comprehensive treatment of the whole field. The large, general cyclopedias, though containing articles of considerable length, have little to say about the details of government, and almost nothing about governmental practices or the activities of what may be called unwritten and extra-legal government.

The editors are confident that this work will in considerable measure supply the need for a usable, succinct, and comprehensive presentation of practical, actual, and theoretical government in America. They have not expected that the specialist in any one portion of the field—for example, in constitutional law—will find much material or many articles in his own province that will be especially illuminating to him. They do expect that even the specialist in any one field will be aided by the discussion of subjects in neighboring fields; the constitutional lawyer, for example, or the economist can obtain information on political theory, international law, or party organization. The book is meant for the general reader and for those whose interests and duties call them to the study of public affairs; it is meant for the library, the study table, the editorial room, and the classroom; it is meant for the writer or public speaker who wishes to obtain a certain amount of direct, concrete information on a special topic, and desires references to further and more detailed treatment. The editors have kept in mind also the needs of school and college students who wish to extend the information given in the classroom.

Range of the Work

In this work the word "government" is used as a comprehensive term; it includes the theory or philosophy of political society, the forms of political organization—whether those forms have been laid down in distinct, written law or are only more or less permanent modes of expressing the public will—the methods and agencies by which law or governmental purposes are usually carried out. A considerable portion of the Cyclopedia is made up of articles on the theory or principles of government; though these articles cannot be exhaustive and all-conclusive, they do present sharply, though briefly, the essential and fundamental doctrines and principles underlying

political order and social activity; they are, moreover, prepared from such a viewpoint as to make them serve as a basis for an understanding of existing government and for appreciating actual American conditions and problems.

In addition to political theory, thus practically treated, the volumes contain discussions of the principles of international law, constitutional law, party organization and action, and they present in brief form the most significant and fundamental principles of economic theory. The work is intended to be practical, to describe with concreteness and directness what government actually is and does; but the editors believe that wherever possible, and it generally is possible, an article should be approached from the side of principle, and not written as if an institution or a form of government were an absolute and detached abstract fact. As a basis for an understanding of existing government, and because the term government, as here used, includes the actual operation of political machinery, considerable space is given to constitutional, political, and party history. The principles of international law are supported by numerous articles on the history of American international relations.

Fields of Government

In describing the forms of government, attention is paid to national, state, and local organs. Not every office, however, has by name received separate treatment, though most of the federal bureaus, as well as the principal state and local offices, are described. The number of small offices is so great, and titles differ so much from state to state, the terminology, in fact, often differing when functions are practically identical, that it is impossible to include within reasonable limits every title of local office. Moreover, there are certain general principles of jurisprudence, certain modes and principles of action, which are applicable to many parts or divisions of our highly organized political system. It is not necessary, therefore, to treat these principles and modes of action separately in connection with the different governmental agencies; the Cyclopedia has, wherever possible, recognized and built upon this underlying unity. Naturally, in some cases, such as the financial methods of the Federal Government and those of the states or municipalities, distinctions must be made; but the committee system, the police power, principles or laws of taxation, and scores of other subjects, can be treated to a large extent as if there were only one government, inasmuch as the general point of view, the mode of procedure, and the principles involved are the same, though the governmental agencies may vary.

Great attention has been given throughout the work to that side of American government described by the phrases "actual government," "practice of government," "unwritten government." To the editors, government seems not simply a definite legal system, the boundaries of which can be discovered in written constitutions, statutes, and judicial opinions, but a vital force embodied or expressed in practices, traditions, and extra-legal ideas and principles, quite as much as in law in the ordinary sense of the word. Constitutional law, the formal, legal code of governmental action, has by no means been neglected; but only a faint idea of actual government and political methods can be gained by confining attention to legalistic forms and principles. The almost universal insistence that a legislator should be chosen from the district in which he lives, the customary election of a speaker with great power

to control legislation, the activity and authority of the party boss, are all elements in the vital American government under which we live.

It does not come within the scope of the CYCLOPEDIA to treat in any detail the forms of European government; and yet there are some aspects of foreign states which are especially interesting to students of American political institutions, and it has seemed wise to include a number of brief, compact articles giving such information about forms and practices of foreign states as appeal peculiarly to American readers; for example, as the United States is a federal state, a composite state, short descriptions are given of other federal states; and as American students are naturally interested in English institutions, from which ours were in a measure derived, the CYCLOPEDIA discusses briefly, but we believe in a helpful and illuminating way, the most salient institutions of England and the most significant facts of English party history. Wide as is the field which the CYCLOPEDIA attempts to cover, there is no intention of going beyond public law in its origin, form, and application, and into the field of what is distinctly private or personal law, though naturally the line of demarcation is not always easily drawn; regulations of private action which are far-reaching or of general public interest are included, while those laws which have to do only with relations between individuals are not treated.

SELECTION OF TOPICS

To carry out the plan of making a cyclopedia which would approach completeness in the number and variety of topics treated, if not in the detail with which each topic is discussed, it was found necessary to lay out the whole field from the beginning, to make a careful analysis, and to determine the form as well as the general content of thousands of topics. The obvious device of taking a similar list from preceding works and building on it was impracticable; the editors have had to make their own list from their own notes, from indexes and section headings of treatises on the various phases of American government, and from their own knowledge of practical American government and politics, so far as it would serve. Some topics have doubtless not occurred to the editors; others have been intentionally omitted because of lack of space for adequate treatment; but the reader of the CYCLOPEDIA is not likely, we think, to complain of the omission of topics; he may feel that, in some instances, the space allotted is insufficient and the treatment too brief; but here again the editors had to choose between the inclusion of many topics and the exhaustive treatment of comparatively few, and they unhesitatingly chose the former alternative. They made this decision with the belief that it was well worth while to present a full scheme of treatment and a fairly complete list of topics, each containing a brief bibliography, even if, as a result of the width and scope of the scheme, many articles were not exhaustive. As a matter of fact, for the general reader the short article will in many cases prove more useful than would the more elaborate and complex treatment. However that may be, though articles may appear to the specialist to be of insufficient length, and though some topics may be unwisely omitted, the editors have confidence in the comprehensiveness of the general scheme, and have hopes that the scheme and analysis will be in themselves useful contributions.

Concerning the form of title for topics, there is, of course, room for differences of opinion. The plan adopted here is to begin with the more specific term, thus: "Commission System of City Government," rather than "City Government, Commission System of." But an effort has been made also to give the wording or to use the term which would naturally occur to the mind; for example, "Police, Metropolitan," rather than "Metropolitan Police."

Analysis of Topics

Inasmuch as the various phases of American government do not present themselves in alphabetical sequence, the editors prepared as a foundation for the whole work the following analysis of the Cyclopedia, worked out in groups of topics as shown below. All the articles in the Cyclopedia fall within one or another of these general groups; but the editors have not intended to avoid overlapping in a work which is not intended to be read *seriatim,* and in which many topics have various associations; it is impossible to take an office or function of government and set it apart in just one comprehensive article.

A. LAND AND PEOPLE

I. Physiography.
II. Political Geography.
III. Personal and Race Elements.
IV. Biography of Persons Who Have Contributed to Government.

B. THEORY AND PRINCIPLES

V. General Jurisprudence (with legal terms).
VI. Political Theory and Principles.
VII. International Law.
VIII. Economic Theory.
IX. Constitutional Law.
X. Party Organization and Public Opinion.

C. HISTORY

XI. Political and Constitutional History.
XII. Parties and Party History.
XIII. International Relations.

D. ORGANIZATION OF GOVERNMENT

XIV. General Organization of American Government.
XV. Federal Organization of the United States.
XVI. National Organization of the United States.
XVII. Commonwealth Organization.
XVIII. Rural Organization.
XIX. Municipal Organization.

E. FUNCTIONS OF GOVERNMENT

XX. Territorial Functions.
XXI. Public Finance.
XXII. Industrial Welfare.
XXIII. Regulation of Commerce and Transportation.
XXIV. Social Welfare.
XXV. Regulation of Labor and Occupations.
XXVI. Education as a Public Service.
XXVII. Military Functions and History.
XXVIII. Repression of Crime and Violence.

In working out the plans for the Cyclopedia, the editors early came to the conclusion that they must deal with two types of discussion: first, description of the parts and applications of government, mostly in brief articles; second, comprehensive treatment of the more important phases of government, which includes not only statements of fact but also criticism and discussion. Articles of the second type, for convenience called "treatise" articles, go into such questions as popular government, separation of powers, citizenship in the United States, foreign policy of the United States, and Congressional government, covering the subject in a broad way, massing details and referring for additional information to cognate descriptive articles. For example, the article "Transportation, Regulation of" takes up that large subject on a general plan; but that article presupposes that, elsewhere in the work, will be found detailed information under such heads as: "Accidents, Railroad and Steamship," "Bills of Lading," "Differentials in Railroad Traffic," "Discrimination in Railroad Rates," "Express Service, Regulation of," "Pullman Cars, Regulation of," "Traffic Agreements," etc. The three hundred treatise articles in the Cyclopedia are intended to serve the needs of the reader who wishes in reasonable compass to get a view of a general subject, the details or divisions of which he may study more explicitly by turning to the briefer collateral articles. To bring out the analysis of the longer articles, most of them are subdivided into sections, in order that the reader may discover at a glance whether the article treats a particular topic for which he is looking.

Conveniences for Users

This complexity is relieved by a very free use of cross references. From the treatise articles numerous cross references lead to the brief descriptive articles allied with it. From the brief articles, in like manner, cross references run both to kindred brief articles and to treatise articles. Hence, a reader who strikes any phase of a topic which interests him can follow it through the whole system of the Cyclopedia, and thus can make his own grouping. At the same time the elaborate index to the entire work at the end of the third volume gives a second means of reaching the various discussions of aspects of one subject, wherever treated.

An important part of the work, and one which has involved labor both for editors and contributors, is the system of references at the ends of the articles. With

nearly every article are given a few specific references to recent books or periodical articles. The form of bibliographical entry of these references should make it easy for the reader to find the book or article referred to. In no case has there been room for a full bibliography, and it must be understood that these are select references, the number depending upon the nature of the subject, the amount of material, and the point of view of the contributor. The references are given, not as a rule to support or defend the position of the contributor, but to assist the reader in finding further discussions and to aid librarians and students in looking up the bibliography of the subject.

Responsibility of Contributors and Editors

To carry out this work in the four years during which it has been in preparation, a division of labor has been necessary among upwards of two hundred and fifty contributors, a list of whom appears on subsequent pages. We beg here to express personal obligation to these writers, who felt it a duty to aid in bringing some kind of system into the confusion of the subject, and gave to the task the advantage of their special studies and experience in teaching and publication. Each of the articles is signed by the name or initials of the person who prepared it.

The responsibility for the Cyclopedia is, therefore, divided. Each contributor (including the editors, in so far as they have written articles) takes responsibility for the statements which appear over his name. The editors have not been alarmed by the fact that in some cases articles by two hands upon kindred subjects take different views of the same matter. No two persons will exactly agree on the selection of cogent facts or on deductions from accepted facts. American government abounds in uncertain and controverted questions, and the editors have not thought it desirable to harmonize or reduce to one rigid system the statements of different contributors. It is intended that on matters of fact the work shall be reasonably uniform, but the Cyclopedia is distinctly intended to offer to the reader more than one point of view on many contested points.

Therefore, in dealing with the contributors' manuscripts, after duly calling attention to statements of fact and expressions of opinion which they thought questionable, the editors have not undertaken to substitute their judgment for that of the writer. On the other hand, the editors must accept responsibility for the selection of topics, for the omission of topics which others may think essential, and for the general organization and analysis of the material. The field is so extensive that it cannot be covered or analyzed with absolute thoroughness, but the results are here offered with the hope that they may prove a friendly informant and guide for students, investigators, and public men.

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CYCLOPEDIA OF AMERICAN GOVERNMENT

VOLUME I

A

ABATTOIRS. Abattoirs in cities have long been a matter of public concern. English legislation began as early as 1388, but Parliament has not yet (1913) authorized a general system of municipal slaughter houses. In continental Europe, municipal abattoirs have become general. In Germany, the town councils erect and maintain public abattoirs and forbid slaughtering elsewhere.

In the United States municipal abattoirs are few, because the meat industry is concentrated in a few cities. The problem of the disposition of offal is partly solved by conversion into valuable by-products. Small local abattoirs exist everywhere and are chiefly regulated or prohibited by municipal ordinance, under powers given by most municipal charters. The Joyces say:

> Slaughter houses have been declared to be within the class recognized by the law as in their nature nuisances. They were originally regarded when located in a city or town as nuisances *per se*, and have been held to be such in somewhat recent cases. According to the weight of authority, however, slaughter houses are now regarded as *prima facie* nuisances. It may be shown that it can be so conducted and carried on, as not to endanger or affect the health or interfere with the comfort of the neighboring inhabitants; and when this is shown, the presumption is removed and the business is not a nuisance.

The New York City Board of Health under the code of ordinances (1911),

> may revoke or suspend the permit of anyone who shall conduct said business of slaughtering cattle, sheep, swine, pigs or calves in violation of law and the rules and regulations of the department of health." [further] "no buildings shall be erected or converted into or used as a slaughter house until the plans thereof have been duly submitted to the board of health, and approved in writing by the said board.

See Meat Inspection; Police Power.

References: J. A. and H. C. Joyce, *Treatise on the Law Governing Nuisances* (1906), 167–171; E. McQuillin, *Municipal Ordinances* (1904), 699–701; Ernst Freund, *Police Power* (1904), 159; M. R. Maltbie, *Municipal Functions* (1898). F. D. Watson.

ABOLITIONISTS. This term first formally appears in the pre-revolutionary anti-slavery controversy, and is a part of the title of the Pennsylvania Society formed in 1774; was applied to Clarkson, Wilberforce, and the other English agitators, was taken up by the American Convention from 1794 to 1828, and became the ordinary name for those who were associated in the effort to destroy slavery. During the height of the anti-slavery controversy (*see* Slavery Controversy) emancipation was a mild term, and the straight-out abolitionist held in contempt the "gradualists." Abolition came in the popular mind to stand for a term of reproach. Although the official designation of Garrison's national society was the American Anti-Slavery Society, "abolition" commonly denoted a narrower and more intense form of opposition to slavery than anti-slavery. John Quincy Adams and Abraham Lincoln both denied that they were abolitionists though avowedly anti-slavery men. The characteristics of the abolitionists were absolute opposition to slavery wherever found, and a determination to spur public sentiment to the point where slavery should be destroyed. See Colonization; Confiscation Acts; Emancipation Proclamation; Emancipation By States; Fugitive Slaves; Slavery Controversy; Leading abolitionists by name. References: A. D. Adams, *Neglected Period of Am. Anti-Slavery* (1908); Channing, Hart and Turner, *Guide to Am. Hist.* (1913), § 210; A. B. Hart, *Slavery and Abolition* (1906), chs. xi–xvii; W. P. and F. J. Garrison, *William Lloyd Garrison* (1885–1889); W. Goodell, *Slavery and Anti-Slavery* (1852); M. S. Locke, *Anti-Slavery in Am.* (1901). A. B. H.

ABOLITIONISTS' CONVENTION. Met in New York in November, 1847, and nominated John P. Hale for President and Leicester King for Vice-President. Mr. Hale withdrew. **See** ABOLITIONISTS; FREE SOIL PARTY.

A. C. McL.

ABORIGINES, AMERICAN. The native peoples of America form a group which possesses a considerable degree of ethnic unity. Physically, perhaps, of complex origin, and probably immigrants from Asia in remote prehistoric times, they have developed in the isolation of the American continent a type of culture which, although varying in details, yet possesses sufficient uniformity to enable one to speak of the American Indian as a single type. The distribution of the aborigines over the continent was far from uniform. In some sections, such as that of the arid interior plateau, the population was sparse; on the Pacific coast and especially in California, it was, for an aboriginal people, surprisingly dense. The question of the numbers of the aborigines at the time of the discovery has been much discussed. A conservative estimate however, would put the total population north of Mexico at about one and a half millions at the beginning of the sixteenth century. The present numbers in the same area are about four hundred thousand, of which perhaps sixty per cent are full-blood.

To a greater degree than is commonly supposed, the Indian was sedentary, living in permanent villages throughout the whole or the greater part of the year. The most sedentary tribes north of Mexico were probably those of the Pacific coast, the Southwest, and the southern Atlantic and Gulf states; the most nomadic being certain of the tribes of the plains and the interior plateau. The Indians were divided into several hundred tribes, varying in size from a few hundred of individuals to many thousands. This large number of tribes has been grouped by students into about sixty "stocks" on the basis of language. Some of these stocks are small, consisting of a single tribe, the members of which speak a language which, so far as known, has no relation to any other. Others comprise ten or fifteen different tribes, all speaking languages which can be shown to be more or less closely related. The larger portion of North America north of Mexico was occupied by tribes belonging to six of these stocks, the Algonkian, Athabascan, Siouan, Shoshonean, Iroquoian and Muskogean. It is a common fallacy to suppose that the Indian characteristics and customs were everywhere the same. On the contrary we find among them differences as great as those between the nations of Europe. Eight such well-marked culture areas (all, however, possessing certain fundamental characteristics in common) existed north of Mexico. Each included a number of tribes, sometimes differing physically from each other and often belonging to several different stocks. These well defined culture areas were central California, the northwest coast, the Arctic littoral, the northeastern woodlands, the southeastern woodlands, the plains and the Southwest. The distinctive features of Indian life are now, however, rapidly disappearing, and in a few generations will probably be gone. Increasing intermarriage with the whites is also hastening the day when the Indian will be completely merged in the complex of the American people.

See INDIAN COMMISSIONER; INDIAN COMMISSIONERS, BOARD OF; INDIAN GOVERNMENT; INDIAN POLICY OF THE U. S.; INDIAN RESERVATIONS; INDIAN TREATIES.

Reference: Bureau of Am. Ethnology, "Handbook of Am. Indians" in *Bulletin No. 30* (1907–1910). ROLAND B. DIXON.

ABSOLUTISM. In political science absolutism is a term used to denote a system of government in which the sovereign power is united in a single authority—individual or collective—without legal restraint. Strictly speaking the term does not refer to any particular form of government, since absolute power may be exercised under a monarchy, an aristocracy or even a democracy. However, the greatest number of examples of absolute governments is furnished by monarchies and for obvious reasons. The condition essential to absolutism is united sovereignty, for the moment that the functions of government are distributed and placed in different hands, restraint begins. Thus far but two ways have been discovered to check absolutism. The most common method is that of separating the governmental functions. Nearly all states of western Europe, including England, have the legislative functions exercised by two chambers; and in the United States, the powers of sovereignty itself are divided between the national and the state governments, while in each of these governments the authority is again divided into three general departments—legislative, executive and judicial. The other method of preventing absolutism is by a written constitution or fundamental law made by the people or by their representatives. The fundamental purpose of a written constitution is not merely to outline a plan of government—this could be done by the legislature—but rather to check or restrain those who govern.

Since a united sovereignty is an essential condition of absolutism, it follows that simplicity of form is a necessary concomitant. Daniel Webster says:

> The simplest governments are despotisms, the next simplest, limited monarchies; but all republics, all governments of law, must impose numerous limitations and qualifications of authority and give many positive and many qualified rights. Lieber observes that unity of power, if

sought for in widespread democracy, must always lead to monarchical absolutism. Virtually it is such; for it is indifferent what the appearance or name may be, the democracy is not a unit in reality; yet actual absolutism existing, it must be wielded by one man. All absolutism is therefore essentially a one-man government.

It should, however, be remembered that, from the standpoint of the citizen or subject, no government, whatever its nature or form, can, in practice, exercise absolute sway in every department of human activity. Aside from the limitations of human nature, of public opinion, absolutism, being political in its nature, is limited by the church whose religious authority is usually independent of the state; by international law which restrains sovereign states from acts injurious to the coexistence of the various states; by local government, and, in certain countries, by common law. The absolutism of the Tudors and Stuarts, of Frederick the Great, of Louis XIV, was mainly limited to the central government. The English people had local government in the borough; the Germans in the *Gemeinde* and the free cities, and the French in their communes.

See Constitutions, Classified; States, Classification of.

References: S. E. Baldwin, *Modern Political Institutions* (1898), ch. iv; H. P. Brougham, *Political Philosophy* (1842–46), Pt. I, chs. ii–vii; F. Lieber, *Civil Liberty* (3d ed., 1891).

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ABSTENTION FROM VOTING. See Suffrage; Voting, Compulsory.

ACCIDENTS, RAILROAD AND STEAMSHIP. Many state enactments are intended to promote safety in railway operation. Some states empower their railway commissions to require reports of accidents, and others compel the railways to make their own reports, while a number authorize the commissions to investigate serious or fatal accidents.

Prevention of Railroad Accidents.—Numerous other powers are given commissions to prevent accidents, as follows:

(1) General: To inspect, periodically or at discretion, railway property and operation; recommend or require repairs and improvements, and report to the governor or legislature its recommendations and any neglect of them.

(2) Roadway, bridges, tracks: To certify to the safety of a line before operation begins; regulate fences; require guard rails on bridges; order repairs to railway property; approve switches; compel the removal of switches too near highway crossings; require the separation of grades at railway or highway crossings; order and approve interlocking devices; require flagmen, gates, warning boards or electric signals at highway crossings, and order and approve safety guards near overhead obstructions.

(3) Equipment: To require and approve safety couplers or train brakes, and regulate the heating and lighting and the carrying of tools in passenger cars.

(4) Operation: To regulate the speed of trains near crossings and in cities; also the carriage of explosives and inflammables.

In addition, statutory provisions may be found with the following objects:

(1) Roadway, bridges, tracks: To regulate the weight and quality of rails, and require that railways plow fire guards, keep roadways clear of combustibles and dangerous trees, and construct and maintain culverts and drains.

(2) Equipment: To require brakes on all cars, also tools, buckets, signal cords and flexible platform bridges on passenger cars; to oblige railways to equip locomotives with spark arresters, and place freight cars before passenger cars in mixed trains.

(3) Operation: To regulate the number of brakemen, the running of trains over unsafe tracks or bridges, the stopping of trains before railway crossings or drawbridges, and the soundings of bells or whistles near crossings; to prescribe the qualifications and the hours of labor of various employees; to impose penalties upon employees for being intoxicated while on duty, for neglect of duty endangering life or safety, and for abandoning trains in aid of strikes; also to regulate a railway's right to limit its common law liability.

(4) Injuries to railways: To provide penalties for injury to railway property, derailing or wrecking trains, obstructing tracks, tampering with signals, switches or couplers, and throwing missiles or shooting at trains.

Federal Legislation.—The appalling frequency of railway accidents, in spite of state statutes, has evoked a considerable number of federal laws. An act of March 3, 1901, providing for monthly reports of certain accidents, was replaced by another, May 6, 1910, which requires monthly reports of all accidents injuring persons or railway property; and authorizes the Interstate Commerce Commission to investigate serious accidents. Since 1901 the Commission has issued quarterly accident bulletins.

Other enactments, as in the case of the states, are designed to prevent casualties. Under the original safety appliance act of March 2, 1893, as amended April 1, 1896, June 28, 1902, and March 2, 1903, all freight cars must be equipped with grab irons and automatic couplers, and a sufficient number in each train must be provided with brakes operated from the locomotive. Another enactment, April 14, 1910, amended March 4, 1911, requires the Commission to regulate grab irons, hand brakes, sill steps, running boards and ladders upon freight cars. A joint resolution of June 30, 1906, requires the Commission to investigate block signal systems and appliances for automatic train control. Subsequent appro-

priations have enabled the Commission to maintain, since 1907, as auxiliary to itself, a Block Signal and Train Control Board, created to investigate various types of safety appliances. An act of May 30, 1908, obliges railways to equip locomotives with ash pans capable of being cleaned without an employee going under the locomotive. An act of February 17, 1911, forbids the use of unsafe locomotive boilers and provides for the inspection of boilers and their appurtenances by the railways and also by fifty district inspectors superintended by a chief inspector and two assistants, under the Commission's supervision. An act of February 23, 1905, authorizes "medals of honor" to be awarded by the President for heroic conduct in preventing railway accidents or saving lives endangered thereby.

An act of March 4, 1909, replacing that of May 30, 1908, regulates the transportation of explosives and authorizes the Commission to formulate further regulations. An act of March 4, 1907, while allowing for emergencies, provides that trainmen must have ten hours off duty after sixteen hours continuous service, and eight hours off after sixteen of service in any one day, and that the work of operators, dispatchers, etc., must be limited to nine hours per day in posts operated continuously, and to thirteen hours in other posts.

Prevention of Steamboat Accidents.—Marine transportation is exclusively within the jurisdiction of the Federal Government, and the supervision of steam vessels for the promotion of safety is the function of the Steamboat Inspection Service (*see*), a bureau in the Department of Commerce. The service is charged with the inspection of structural materials for marine boilers, and, annually, of the hulls, boilers, machinery and fire apparatus of vessels under its jurisdiction. It has power to determine the number of passengers a vessel may carry, and to promulgate rules for the provision of life-saving apparatus. It is charged, moreover, with the examination and licensing of officers, and with the enforcement of all laws intended to protect the lives of passengers and crew. Congress has enacted many acts for this purpose, the most important of which have been on the statute books since the early days of steam navigation. One of the most important of recent enactments is the act of July 23, 1912, prescribing wireless equipment for all vessels navigating the ocean or the Great Lakes licensed to carry 50 or more persons.

See EMPLOYERS' LIABILITY; INTERSTATE COMMERCE COMMISSION; INTERSTATE COMMERCE LEGISLATION; LABOR, PROTECTION TO; NAVIGATION, REGULATION OF; RAILROADS, ELECTRIC; RAILROADS, REGULATION OF; STEAMBOAT INSPECTION.

References: The statutes mentioned above; State Railway Commissions, and Interstate Commerce Commission, *Annual Reports;* F. H. Dixon, "Railroad Accidents" in *Atlantic Monthly,* XCIX (1907), 577–590; F. W. Johnson, *Prevention of Accidents* (1910); *Am. Year Book, 1911,* 553, *1912,* 56, 57.

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ACCIDENTS TO EMPLOYEES. See ACCIDENTS, RAILROAD AND STEAMSHIP; EMPLOYERS' LIABILITY; INDUSTRIAL INJURIES.

ACCOUNTS. See ALDRICH, N. P.; BANK, CENTRAL; CURRENCY ASSOCIATIONS; PUBLIC ACCOUNTS.

ACCOUNTS, BUREAU OF. The Bureau of Accounts is one of the bureaus of the Department of State (*see* STATE, DEPARTMENT OF). It is charged with the bookkeeping and finance of the department. References: Secretary of State, *Annual Reports;* J. A. Fairlie, *National Administration of the U. S.* (1905), 79.

A. N. H.

ACCOUNTS, PUBLIC. See PUBLIC ACCOUNTS.

ACTS OF CONGRESS. Congress can exercise only the powers delegated to it by the Constitution. It is therefore prohibited from trespassing upon wide and important sections of the general legislative field which are reserved to jurisdiction of the state legislatures. Nevertheless, the annual legislative output of Congress, as compared with that of other national legislatures, has grown portentously large. The First Congress passed only 115 acts. Far different has been the record of recent Congresses:

Congress	Public Acts	Private Acts	Total
Fifty-eighth	574	3,467	4,041
Fifty-ninth	692	6,248	6,940
Sixtieth	350	234	584
Sixty-first	525	285	810
Sixty-second	530	180	719

It is not to be inferred from these statistics that the legislative mill is being run at a lower speed than formerly, nor that in the course of seven or eight years the ratio of public to private acts shifted from 1: 6 to something like 2: 1. For the 810 acts of the Sixty-first Congress included "an omnibus bridge bill, an omnibus lighthouse bill, an omnibus dam bill, an omnibus Indian bill, an omnibus claim bill, and 9790 private pension bills!" And an "omnibus bill" may cover a multitude of legislative sins too deep for amendment or veto.

Crude as the committee system in Congress may be for securing many of the qualities to be desired in legislation, it is to be credited with a large part of the work of killing off worthless bills—though much good grain is left buried in the mass of chaff. During the Sixty-first Congress there were introduced in the House 33,015 bills and 1,368 resolutions; in the Senate, 10,906 bills and 578 resolutions.

Yet only 886 of these measures passed both houses. Of these, four were vetoed by the President, and no one of them was passed over his veto.

When a bill has been passed by both branches, the "enrolled" copy, attested by the signatures of the President of the Senate and Speaker of the House, goes to the President. If he signs it, or allows it to become a law, it takes effect at the time indicated in the act. Thus, the Tariff Act of 1909 was signed by the President at "five minutes after five o'clock P. M.," Washington time, August 5, and was to "take effect on the day following its passage," and for many hours wireless messages were urging in-coming steamers into port before the new rates should be applicable (*see* LEGISLATION, WHEN IT TAKES EFFECT).

The acts of Congress for each session are edited, printed and published by authority of Congress, under the discretion of the Secretary of State, in the *Statutes at Large.* The enrolled bill is the standard of reference in case inaccuracy in the printed law is alleged. In 1874 Congress enacted in the *Revised Statutes* a codification of the acts of Congress remaining in force December 1, 1873, and successive volumes of the *Supplement* have been issued from time to time. A codification of the criminal laws of the United States, in force January 1, 1912, has been brought down to August 1, 1912, by revision.

See CONGRESS; CONGRESSIONAL RECORD; HOUSE OF REPRESENTATIVES; LEGISLATIVE OUTPUT; PRIVATE BILLS; SENATE.

References: J. Bryce, *Am. Commonwealth* (4th ed., 1910); P. S. Reinsch, *Am. Legislatures* (1907), 299–330; A. B. Hart, *Actual Government* (1903), 244–257; H. J. Ford, *Cost of Our National Gov.* (1910), 39; G. F. Tucker and C. W. Blood, *Federal Penal Code in Force January 1, 1910* (1910).

GEORGE H. HAYNES.

ACTS OF TRADE. The economic and imperial side of the British colonial policy is clearly seen in the long series of acts to regulate trade passed between 1660 and 1764. These acts, including as they do the navigation acts (*see*), deal with all phases of colonial commerce and industry, and can best be appreciated when grouped according to certain principles.

(1) Importation of Provisions to England.—Prohibitory duties were levied in England upon the importation of agricultural products and salt provisions. These were obviously for the protection of the British landlord, but they prevented the normal exchange of colonial products for English manufactures and forced the colonists to seek other markets and later to begin manufacturing for themselves.

(2) Importation of Colonial Goods to England.—Heavy or prohibitory duties were levied upon non-colonial importations to protect colonial products which were admitted at nominal duties in England.

(3) Enumerated Goods.—Naval stores and six other colonial products were classified as "enumerated goods" (*see* NAVIGATION ACTS) and were required to be shipped to England and nowhere else.

(4) Intercolonial Trade.—Duties were laid upon intercolonial trade in enumerated goods for the purpose of enforcing their shipment to England.

(5) Non-English Commodities in the Colonies.—Prohibitory duties were laid upon non-English goods imported into the colonies to encourage the colonial production of these articles. The best example of this is the Molasses Act of 1733, which, if enforced, would have put an end to the importation of molasses and sugar from the French Indies in order to stimulate the industry in the English Indies.

(6) Manufactures.—To protect the English manufacturer restrictions or prohibitions were laid upon the colonial manufactures whose competition was most feared: woolens, hats, iron, and steel.

(7) Bounties.—Bounties of two sorts were paid which were of benefit to the colonies. Those paid directly to the colonists encouraged the production of masts, hemp, pitch, and tar; while those paid to English manufacturers reduced the price of those goods to the colonial consumer.

Applications of the System.—Before 1763 these acts were valued in England more for their economic and imperial effects than for the revenue they produced; in fact the revenue raised in the colonies was not sufficient to pay for the administration of the system. The colonists, moreover, through the lax enforcement of the laws and the total disregard of the Molasses Act, were probably benefited by the system. In 1764, however, the government reënacted the provisions of the Molasses Act under a statute known as the "Sugar Act," and attempted to collect the duties, which had been lowered to a revenue basis. This clearly revealed a new policy of utilizing the acts of trade as revenue acts and was the forerunner of the Stamp Act and the Townshend Acts which aroused revolutionary opposition.

See COLONIZATION BY GREAT BRITAIN IN AMERICA; COMMERCE, INTERNATIONAL; LORDS OF TRADE; NAVIGATION ACTS; REVOLUTION, AMERICAN, CAUSES OF.

References: G. L. Beer, *Commercial Policy of England* (1893), *British Colonial Policy 1754–1765* (1907), chs. x, xi, xii, *The Old Colonial System* (1912), Pt. I, I, chs. ii, iii; G. E. Howard, *Preliminaries of the Revolution* (1905), ch. iii; W. MacDonald, *Select Charters* (1899), Nos. 22, 23, 28, 34, 43, 50, 56, 57, 61 contain texts of some of the acts; E. L. Lord, "Industrial Experiments in the British Colonies of N. Am." in Johns Hopkins Univ.

Studies in Hist. and Pol. Sci., Extra Vol. XVII (1898); bibliography in A. B. Hart, *Manual* (1908), § 169. EVERETT KIMBALL.

ADAMS, CHARLES FRANCIS. Charles Francis Adams (1807–1886) was born at Boston, August 18, 1807. From 1840 to 1845 he served in the Massachusetts General Court as a Whig, and from 1846 to 1848 edited the *Boston Whig*. He was chairman of the Free Soil convention at Buffalo in 1848, receiving the nomination for the vice-presidency on the ticket with Van Buren. On the organization of the Republican party he became a prominent member, and from 1859 to 1861 served in the House of Representatives. From 1861 to 1868 he was minister for the United States to Great Britain. The open friendliness of the British ministry, and of many influential individuals, for the Confederate cause made his task one of great difficulty, but he displayed marked ability in dealing with American interests, and repeatedly warned the ministry of its responsibility for the losses caused by the *Alabama* (*see*) and other privateers or Confederate cruisers. In 1871 he represented the United States in the Geneva arbitration, and the next year was an unsuccessful candidate for the Republican presidential nomination. He died at Boston, November 21, 1886. He edited the *Works of John Adams* (10 vols., 1848–56), and *Memoirs of John Quincy Adams* (12 vols., 1874–77). **See** GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; MASSACHUSETTS; REPUBLICAN PARTY. **References:** C. F. Adams, *Charles Francis Adams* (1900); J. M. Callahan, "Diplo. Relations of the Confederate States with England" in Am. Hist. Assn., *Reports*, 1898; J. F. Rhodes, *Hist. of the U. S.* (1893–1905), IV, V. W. MACD.

ADAMS, JOHN. John Adams was born in Braintree, Mass., October 30, 1735, and died July 4, 1826. After his graduation from Harvard, he studied law. By addresses and newspaper essays, he took an active part in opposition to the Stamp Act and other measures of Parliament preceding the Revolution. He was a member of the committee which draughted the Declaration of Independence and was the leading advocate in Congress in favor of independence. In his *Thoughts on Government* (1776), he opposed a legislature of one house, advocated a judiciary distinct from and independent of the executive and legislative branches and developed the theory of checks and balances. Judges were not to be dependent upon any man or body of men and were to hold office during good behavior. Towards the close of the year 1777, having resigned from the Board of War, he embarked for Paris as successor to Silas Deane, one of the three commissioners at the French court. His *Dissertation on the Canon and Feudal Law* (1765); *Defence of the American Constitutions* (1786); and his *Discourses of Davila* are among the early discussions on the American principles of government. In 1785, he was appointed minister to Great Britain and in 1789 became Vice-President. As President he declined to recommend restrictions on the rights of aliens and of naturalization, but he applied the Alien and Sedition laws after they were passed; he appointed John Marshall Chief Justice of the Supreme Court; and ignored the advice of his Cabinet in sending the second commission to France. **See** CONTINENTAL CONGRESS; FEDERALIST PARTY; FRANCE, DIPLOMATIC RELATIONS WITH; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; MASSACHUSETTS; PRESIDENT, AUTHORITY AND INFLUENCE OF; REVOLUTION, AMERICAN, CAUSES OF. **References:** J. T. Morse, Jr., *John Adams* (1884); J. Q. Adams and C. F. Adams, *Life of John Adams* (1871); John Adams, *Works* (10 vols., 1850–1856); John Adams and Abigail Adams, *Familiar Letters* (1876). J. A. J.

ADAMS, JOHN QUINCY. John Quincy Adams (1767–1848), son of John Adams (*see*) and sixth President of the United States, was born at Braintree, Mass., July 11, 1767. His public life began in 1794, when he was appointed minister to The Hague. In 1799 he negotiated a commercial treaty with Prussia. In 1802 he entered the Massachusetts senate, from which he passed in 1803 to the United States Senate, where he served until 1808, when a quarrel with the Federalists because of his support of Jefferson led him to resign. He was minister to Russia, 1809–14; one of the negotiators of the treaty of Ghent in 1814; and minister to England, 1815–17. From 1817 to 1825 he was Secretary of State under Monroe, his chief services being the negotiation of commercial treaties, the annexation of Florida, and the statement of the Monroe Doctrine. In 1825 he was elected President by the House, not having received a majority of electoral votes. His messages are marked by comprehensive and enlightened recommendations, but the rising tide of opposition nullified his efforts. His greatest influence was exerted from 1831 to 1848, when, as a member of the House of Representatives, he championed the right of petition and gradually became an anti-slavery force. He died at Washington, February 23, 1848. **See** DEMOCRATIC-REPUBLICAN PARTY; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; MASSACHUSETTS; PRESIDENT, AUTHORITY AND INFLUENCE OF. **References:** C. F. Adams, *Memoirs of J. Q. Adams* (12 vols., 1874–77); W. H. Seward, *Life and Public Services of J. Q. Adams* (1849); J. T. Morse, *John Quincy Adams* (rev. ed., 1898).
W. MACD.

ADAMS, SAMUEL. Samuel Adams was born in Boston, Mass., September 27, 1722, and died October 2, 1803. He was graduated from

Harvard and studied law, but entered upon a business career. To him was assigned the task of drafting instructions to the representatives of the General Court relative to the Stamp Act. These were submitted May 24, 1764, and contain the first public denial of the parliamentary right of taxation and the first suggestion of a union of the colonies for redress of grievances. From 1765 to 1774 he was a member of the legislature and from his pen came a series of petitions directed to the King and other English officials, and a circular letter (February, 1768) to the other colonial assemblies asking their assistance. Through his influence, Governor Hutchinson was obliged to remove the troops to Castle William after the Boston Massacre, and committees of correspondence in eighty or more towns were organized. These committees promoted unity of thought and feeling and preceded the committees of correspondence between the colonies. He was a member of the Continental Congress and was a persistent advocate of independence. The Massachusetts constitution of 1780 shows his influence. His opposition to the Federal Constitution in the state convention was due to his fear of the encroachments of a strong central government. See Continental Congress; Massachusetts; Revolution, American, Causes of. References: Samuel Adams, *Writings*, edited by H. A. Cushing (1904); J. K. Hosmer, *Samuel Adams* (1885). J. A. J.

ADDRESSES OF PUBLIC OFFICIALS. From the earliest organization of colonial government it was the habit of both royal and elected governors to communicate their wishes in person to their assemblies; the practice lasted through the first twelve years under the Constitution, then disappeared for one hundred and twelve years when Jefferson, in 1801, sent written messages to Congress. President Wilson, April 8, 1913, returned to the former custom and delivered his address to Congress in person. It is, nevertheless, the custom of executive heads, particularly presidents, governors, and mayors, to publish their views, and often to express their opinions, especially when they are at variance with the legislative departments, by public addresses. The first President whose occasional speeches caught the public ear was Andrew Jackson and later Abraham Lincoln. The first President to express his mind indirectly through a newspaper interview was Grover Cleveland. Since Harrison's time Presidents have consciously sought to affect legislation by presenting their views directly to their countrymen. President McKinley was assassinated just after making a speech in favor of a reduction of the tariff. President Roosevelt and President Taft freely accepted invitations to all parts of the country to public dinners and other like occasions, and arranged long programmes of speaking tours, including speeches from the platforms of railroad trains. Such addresses are now looked for as revelations of the President's intentions, more than written messages. See Governor; Mayor; Messages; President. References: The collected works of Presidents, especially of Lincoln and Roosevelt; *Am. Year Book, 1910*, 44–47; J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, 280, II, ch. cxviii. A. B. H.

ADDYSTON PIPE CASE. The Addyston Pipe Case (Addyston Pipe and Steel Co. *vs.* United States, 175 *U. S.* 211) decided in 1899, is one of the important cases construing the extent of the regulative powers given to the Federal Government under the commerce clause of the Constitution, and defining the scope of the Sherman Anti-Trust Act (*see*) of 1890. In earlier cases it had been held that the manufacture of commodities which are intended for export, and which, in fact, are exported to other states, is to be distinguished from the interstate transportation of those goods, that "commerce succeeds to manufacture and is not a part of it," and that the federal jurisdiction begins only when transportation has begun. In the Sugar Trust Case (United States *vs.* E. C. Knight Co., 156 *U. S.* 1), decided in 1895, the Supreme Court had, for this reason, held that the act of 1890 did not, and constitutionally could not, relate to the acquisition by one company of the stock of a number of other companies with a view to, and the result of, establishing a substantial monopoly of the business of refining sugar in the United States. The fact that the product was, for the most part, a subject of commerce among the states, was declared immaterial. The importance of the Addyston Pipe Case was that the court showed a willingness to give a more liberal interpretation to the federal commercial power and to the act of 1890, and to bring within the constitutional scope of the latter a combination or agreement between manufacturers or dealers if it should appear that in any way the agreement, in purpose or effect, controlled the normal course of interstate commerce. In this case an agreement was held illegal under which six companies, engaged in the manufacture or sale of iron pipe throughout the United States, had allotted among themselves the territory within which each should have the exclusive right to sell. See Interstate Commerce and Cases; Sherman Anti-Trust Act. W. W. W.

ADJOURNMENT. The power of a legislative body to adjourn its sittings to such time as it may see fit is a universally recognized rule of parliamentary law. Practically everywhere, however, the concurrence of both houses is necessary to extended adjournments. Thus the constitutions of the United States and of all the states provide that neither house may

adjourn without the consent of the other house for a period exceeding three days (Art. I, Sec. V, ¶ 4). In case of disagreement between the houses as to the time of adjournment, the executive is usually empowered to adjourn the legislature to such time as he may think proper (Art. II, Sec. iii). A few constitutions require that in case of disagreement the fact thereof shall be certified to the executive by the house first proposing to adjourn. An adjournment is in effect nothing more than a suspension of the session, and has no effect upon the continuity of legislative business further than to interrupt its consideration for the time being. See DISSOLUTLON AND PROROGATION. References: A. G. Hinds, *House Manual* (1909).

J. W. G.

ADJUTANT GENERAL OF THE UNITED STATES. This officer is the official channel of communication between the President and the Secretary of War and the several organizations and individuals who compose the constitutional military establishment. He is the head of the adjutant general's office of the War Department. His duties relate to the maintenance of the personnel of the army. He is charged with the commissioning, promotion and retirement of officers and the recruiting, promotion and discharge of enlisted men. See COURT OF INQUIRY; COURTS MARTIAL; JUDGE ADVOCATE GENERAL; MILITARY DISCIPLINE; MILITARY AND NAVAL EXPENDITURES; MILITIA; OFFICERS; PRESIDENT. References: H. C. Black, *Constitutional Law* (1895); C. M. Clode, *Military Forces of the Crown* (1862), II, ch. xxvi; W. W. Whiting, *War Powers Under the Constitution* (10th ed., 1871), 66–82; C. H. Van Tyne and W. G. Leland, *Guide to the Archives* (2d ed., 1907), 106–117.

G. B. D.

ADJUTANT GENERAL, STATE. The adjutant general is usually in charge of the state troops, and at the head of the governor's staff. Few states in their constitutions provide directly for an adjutant general, for most states give the legislature the power to establish such officers in connection with the militia. In almost every state, the governor appoints the adjutant general. In South Carolina, the latest constitution provides for the popular election of the adjutant general. The usual provision is that the duties shall be prescribed by law. The duties, however, are separate from the local police duties of the municipalities. See STATE DEPARTMENTS, HEADS OF; MILITIA. References: A. B. Hart, *Actual Government* (1908), § 68; F. N. Thorpe, *Federal and State Constitutions* (1909).

T. N. H.

ADMINISTRATION. See CABINET; EXECUTIVE AND CONGRESS; LAW, ADMINISTRATIVE.

ADMINISTRATION IN EUROPE

Definition.—To the term "administration" are accorded two quite different meanings. In the first place, the congeries of authorities entrusted with the execution and administration of the law are spoken of as "the administration." In the second place the work which those authorities perform is called "administration." Anglo-American and continental European conceptions of administration, whether the term is used as indicative of organization or function, are very different. The difference in the use of the term has originated in the difference which is noticeable in the historical development of England on the one hand and the continent of Europe on the other.

England and America.—In England, largely owing to the early centralization of government under a Crown whose supremacy was legally unquestioned, no really important distinction was made between the authorities which were to execute the law and those whose duty it was to decide controversies. Judges and administrative officers were both members of one official system and were both subject to the same disciplinary power which was exercised by the crown. The only important distinction between them was to be found in the fact that some of them were superior in rank to the others. Certain of them discharged functions requiring the exercise of discretion and were often spoken of as judicial in character. Others for the most part executed the orders of their superiors and were called ministerial officers.

When the "Act of Settlement" gave to judicial officers a protected tenure, the independence which they thus secured made it seem advisable to recognize that it was only judicial officers who should have the power to take action which would finally bind the individual. In this way the courts, as these higher judicial officers were finally called, came to have almost complete control over the actions of those officers whose duty it was to execute the laws, and there was never, and is not now, either in England or the United States a clear cut distinction between judicial and executive administration. It is, of course, true that with the development of greater complexity in our social conditions, series of officers,' such as health officers, factory and building inspectors and so on, have been provided, who have made the distinctly administrative side of our government assume greater importance. But particularly in the United States and in large degree because of our constitutional restric-

tions it is seldom that these administrative officers are recognized as having the power to take action which will finally determine private rights. In this way in both England and the United States, the administrative and judicial organization have never become clearly separated and the function of administration of government is inevitably much confused and commingled with the administration of justice.

Functions of Administrative Officers.—On the continent of Europe, however, the personnel of the judiciary has been for many years more clearly separated from that of the administration. This is due to the fact that for one reason or another the position of judges was more independent of the Crown than was the case in England. In France this greater independence was due to the recognition of a property right in judicial office, which was bought and sold. This independence of the courts was the cause of the attempt on the part of the Crown, which was largely successful, to relieve from judicial control those officers whose duty it was to enforce the law. Their action, in which consisted the function of administration, being thus independent, came to be more clearly separated from judicial action than was the case in England. It was recognized as a matter of law, not only that administrative officers could take action which would bind the individual, but also that this action was frequently final and could not be reviewed by the courts.

In this way the function of purely administrative officers came to be regarded as more important on the continent than in England. Greater play was accorded to administrative discretion than was the case in England. Indeed, in many cases, what in the latter country would be regarded as arbitrary powers was recognized as possessed by continental administrative officers. But the very fact that the function of administration was so important and so independently discharged in continental Europe brought it about that administrative procedure became more formal than was the case in England and the United States. The greater centralization of the continental administrative organization to which attention will be called, also offered the opportunity for a series of appeals from inferior to superior administrative officers.

The result is that, notwithstanding the lack of judicial control over all administrative action, probably private rights are, in most cases, as well protected under the continental as under the Anglo-American system. For under the latter, administrative procedure is so informal, particularly in the United States, where important administrative determinations affecting property rights are made without any opportunity for a hearing being accorded the persons affected, that the only protection afforded private rights which exists must be found in the judicial control over administrative action. This control, however, is in many instances not an effective one, for frequently the courts in the United States refuse to exercise their powers in such a way as to interfere with what they regard as administrative discretion, or to revise the determination of questions of fact by administrative officers. Furthermore, the development on the Continent of a somewhat detailed legislation regarding the competence of administrative officers and of what are called administrative courts (*see* COURTS, ADMINISTRATIVE) which are to enforce this legislation, has resulted in diminishing very greatly the extent of the field formerly open to the arbitrary discretion of administrative officers.

It is still true, however, that the function of administration on the continent is a much more dignified and important one than is the case in England. Administrative officers have still probably a much wider sphere of discretionary action. They are commonly, particularly in Germany, much more competent to discharge their duties than is the case in the Anglo-American administrative system. They are more competent because as a rule greater attention is given to their education for the important duties which they discharge, and greater care has been taken to make their positions permanent in character. Anglo-American law and public opinion would seem to have exhausted itself in the endeavor to secure competent and reasonably permanent and independent judges. Little effort has apparently been expended in the endeavor to obtain really competent permanent and independent administrative officers in either England or the United States.

Organization.—It has been said that the term "administration" is indicative of organization as well as of function. When used in this sense "administration" has quite a different meaning in England and the United States on the one hand and in continental European countries on the other hand. This difference in meaning, also, is in large measure due to historical development. When the English Parliament succeeded to the legal supremacy of the Crown it seemed a perfectly natural thing for it to assume the right formerly exercised by the Crown of determining in great detail the powers of all officers. This detailed legislation, which officers were forced by the judges to obey, made easy the development of an administrative organization which owed its allegiance rather to the law as laid down by the Parliament or elaborated by the courts, than to any administrative superior, whose instructions and orders were, because of the detailed character of administrative legislation, almost unnecessary. Hence, we find, developing in close connection with the Parliament, the office of justice of the peace, which, established in 1361 during the reign of Edward III, finally became the controlling au-

thority in English administration. In its final form the office of justice of the peace was an unpaid obligatory office and the incumbents of it were chosen from the well-to-do classes. Their economic independence finally resulted in giving them a practically permanent tenure, and, because they were chosen from among the inhabitants of the counties which they administered, made the English system of administration an actually highly decentralized system. It is true they have always been appointed, but as they are appointed from the localities in which they reside, and as has been said, are actually independent in their tenure of any central administrative authority, the system to which they give its character is one of great local self government.

In the United States earlier than in England the method of appointment was abandoned, and provision was made for the popular local election of all local officers such as supervisors and county commissioners, but the change that was thus made served only to accentuate the decentralized character of the system. In it locally elected officers were, under an extensive judicial control and supervision, to enforce a most detailed legislation.

On the Continent no central legislative body worthy of the name developed in any European state before the first of the nineteenth century. In all continental European countries the only political unity to be found was in the Crown, which strove everywhere to establish a system of administration highly centralized in character when compared with that of England. This administrative centralization, through which alone aspirations for national unity first could find expression, was almost completed by the end of the eighteenth century. It was based upon the conception of an administrative hierarchy in which the superior officers having jurisdiction over the entire state could issue instructions to inferior officers having jurisdiction over local districts. These instructions took the place of the detailed legislation of the Parliament in England and were absolutely necessary since, as has been intimated, such detailed legislation did not exist on the continent. Probably as typical and characteristic an example of such a centralized administrative system as can be adduced is the prefectoral system established in 1800 for France by Napoleon in the great law of the 28th Pluviôse An VIII.

At the beginning of the nineteenth century we have an Anglo-American system of administration extremely decentralized in character in the sense that locally elected officers carried out state laws under the supervision and control of an independent judiciary, and a continental system highly centralized in the sense that centrally appointed officers executed the instructions of administrative superiors and were to a large degree independent of judicial control.

Recent Development.—Since the beginning of the nineteenth century these types of administration have been more and more approaching the same general type by the loss of their salient characteristics. English local self government, as it has been called, has been, thus, much centralized, in that greater and greater provision has been made by legislation for the establishment of a central administrative control. The beginning of the movement may be found in the Poor Law Amendment Act of 1834, passed to remedy abuses for which the decentralized administration of the justices of the peace was in large measure responsible. The tendency towards administrative centralization, while not so marked in the United States, is still noticeable. The federal system of administration was from the beginning characterized by a high degree of centralization which, as the country has developed, has tended to increase rather than diminish, while in the states the establishment of state commissions and boards which exercise powers of control over local officers, or administer new functions of government independently of local officers, is becoming more and more characteristic of our development.

While Anglo-American administration has thus exhibited marked tendencies towards centralization, continental systems have been considerably decentralized. Hardly a piece of administrative legislation has been passed in France since 1800 which has not granted greater independence of central administrative control to local officers, who are now more frequently elected than formerly and whose duties are, since the development of a central legislative body, often outlined, at any rate in a general way, in legislative statutes. What is true of France is almost as true of Germany where a period of administrative reform with a distinctly decentralizing tendency was inaugurated soon after 1870.

At the same time it is still true that Anglo-American administration is decentralized while continental European administration is centralized in character. In continental Europe appeals from the decisions of inferior administrative authorities to their superiors are frequently permitted which under the Anglo-American system would go to the courts.

It may, therefore, still be said that administration whether considered as function or organization is quite a different thing in Anglo-American law from what it is in continental European law although there are strong reasons for supposing that in course of time the two systems of administration will more and more closely approximate a common type as the economic and social conditions come more closely to resemble each other.

See Court, Commerce; Court of Claims; Courts, Administrative; Courts and Unconstitutional Legislation; Courts, Federal; Judicial System in Europe; Law, Adminis-

TRATIVE; LAW, CONSTITUTIONAL; PUBLIC OFFICERS.

References: F. J. Goodnow, *Comparative Administrative Law* (1893); M. Hauriou, *Précis de Droit Administratif* (1907); L. Aucoc, *Conferences sur l'Administration et le Droit Administratif* (1882–1886); R. Gneist, *Das Englische Verwaltungsrecht* (1883–1884).

FRANK J. GOODNOW.

ADMINISTRATIVE COURTS AND TRIBUNALS. See COURTS AND TRIBUNALS, ADMINISTRATIVE.

ADMINISTRATIVE DECISIONS. These are the decisions by administrative officers of matters whose determination is entrusted to them by statute. Examples of such decisions in the law of the states are assessments of property for the purposes of taxation, the determination by a health authority that given conditions constitute what is recognized by law to be a nuisance, and the grant or revocation of a license to do anything which under the law is prohibited without the license. Generally speaking, administrative decisions are not so important in the law of the separate states as they are in the law of the United States National Government. Furthermore, the control of the state courts over them is greater than is that of the United States courts over the decisions of the administrative officers of the National Government.

While the increase in the activity of government which has been characteristic of recent years has resulted even in the state government in an increase in the number and importance of administrative decisions, this increase is particularly noticeable in the case of the National Government. Many acts of Congress have conferred power upon certain of the higher officers, for the most part heads of executive departments, to determine either in first instance or on appeal by the person aggrieved by the decision of a lower administrative officer, either questions of fact or questions of mixed law and fact.

Thus the Secretary of the Interior is by statute authorized, on appeal from the Commissioner of the General Land Office, to determine certain questions relative to the sale or occupation in the way provided by law of the public lands. The Secretary of Labor is authorized on appeal from the commissioners of immigration at the various ports to determine the right of an alien to land, *i. e.*, to determine whether such alien comes within the class of immigrants not permitted by the law to enter the United States. The Postmaster General is authorized to determine whether a given person is acting contrary to the statutes which forbid making use of the mail for fraudulent purposes or as a means of distributing obscene or indecent matter.

In some of these cases, as, *e. g.*, in the case of the attempted immigration into the United States of those classes of Chinese forbidden by law to come into the country, the law specifically says that the decision of the commissioners of immigration is final unless appeal is taken therefrom to the Secretary. But even where the law does not thus expressly provide for the finality of the administrative decision the tendency of the courts is to regard as final such decisions of questions of fact and even of mixed law and fact where no special provision has been made for an appeal to a judicial tribunal, as is provided, *e. g.*, in the case of the decision of certain questions relating to patents.

The finality of such administrative decisions is, however, conditioned upon two things. In the first place the decision must be within the jurisdiction of the authority making it. Thus, *e. g.*, in the alien immigrant cases the jurisdiction is dependent upon the fact that the person affected by the decision is an alien; and if a person who claims he is a citizen is actually excluded by an administrative decision he may appeal in a proper way to the United States courts. In the second place, if the decision, although within the jurisdiction of the officer making it, is oppressive and an abuse of administrative discretion, the courts claim the right to disregard it. It is seldom the case, however, that courts disregard these administrative decisions for abuse of discretion where that abuse has not consisted in refusing to give the person affected a fair hearing. Indeed, such a hearing is sometimes specifically provided by the law.

See COURTS AND TRIBUNALS, ADMINISTRATIVE; LAW, ADMINISTRATIVE.

References: F. J. Goodnow, *Principles of the Administrative Law of the U. S.* (1905), *Comparative Administrative Law* (1893); J. A. Fairlie, "Administrative Powers of the President" in *Michigan Law Review*, II (1903–1904), 190–210, 247–259; T. R. Powell, "Conclusiveness of Administrative Decisions in Fed. Gov." in *Am. Pol. Sci. Review*, I (1907), 583–608.

FRANK J. GOODNOW.

ADMINISTRATIVE LAW. See LAW, ADMINISTRATIVE.

ADMIRALTY AND MARITIME JURISDICTION. The Constitution of the United States (Art. III, Sec. ii) extends the judicial power of the federal courts "to all cases of admiralty and maritime jurisdiction." In England the jurisdiction of the admiralty courts was much restricted by statutes and by territorial conditions on which admiralty jurisdiction was thought to depend. The statutory conditions existing in England at the time our Constitution was adopted, have, however, been there removed by subsequent legislation and have been discarded by our courts as a basis for determining the scope of jurisdiction contem-

plated in our Constitution, for the reason that the admiralty jurisdiction in the colonies, exercised under express commission from the Crown, was not subject to the limitations found in the English statutes; and territorially the ebb and flow of the tide recognized in England as a test of navigable waters over which the jurisdiction might extend has been held to be inapplicable in this country. Following European usage our admiralty courts entertain jurisdiction not only over the high seas but over all navigable waters, including interior lakes, rivers and canals.

As the particular jurisdiction of any federal court (save that of the Supreme Court which in admiralty cases can be exercised only on appeal) must be determined by Congress within the limits permitted by the Constitution, the admiralty jurisdiction of any such court is fixed by federal statutes. In general the jurisdiction in admiralty thus conferred covers cases arising under contracts involving performance principally upon navigable waters, such as contracts for the transportation of goods or passengers, bottomry, hypothecation, the furnishing of materials for and the making of repairs upon foreign vessels, policies of marine insurance, contracts express or implied for seamen's wages, and cases of tort committed in navigable waters, including not only personal torts but injuries due to collisions resulting from negligent management of vessels. In time of war the admiralty jurisdiction includes the power to determine questions of prize (*see* Prize Cases). It also extends to the punishment of crimes committed upon navigable waters, but as no crimes are punishable in the federal courts save as they are specified by statute the jurisdiction in this respect is not different from that as to other statutory offences.

Actions in admiralty may be *in personam*, that is, actions between individuals for breach of contract or for tort, or they may be *in rem*, that is, proceedings for the determination of rights to or claims against a vessel or other particular subject matter. In the former class of cases admiralty jurisdiction is not exclusive of the jurisdiction of other courts, the statute preserving to parties their rights of action at common law; but in the latter class the exercise of jurisdiction is peculiar to courts of admiralty and no such remedy is available in any other court. It is essential to the jurisdiction *in rem* that the vessel or other subject matter involved be brought by seizure or otherwise into the jurisdiction of the court.

Original jurisdiction in admiralty cases is by statute in the district courts, with appeal to the circuit court of appeals, save that in cases of prize and in some other particular classes of cases the appeal is to the Supreme Court. In general, trial is by the court without a jury, but by statutory provision jury trial is provided for in some special cases.

See Canals and Other Artificial Waterways; Courts, Federal; Courts, Federal, Jurisdiction of; Navigable Waters; Prize Law and Courts.

References: E. C. Benedict, *Admiralty* (4th ed., 1910). The early continental and English authorities are fully collected by Judge Story in his opinion in the case of De Lovio *vs.* Boit (1815), 2 *Gallison* 398, 7 *Fed. Cases,* No. 3776. The laws of Oléron and other early maritime codes and ordinances are printed (in translation) as an appendix to Vol. I, Peter's *Admiralty Decisions* (1792–1807), and reprinted in Appendix to *Fed. Cases,* XXX. Leading cases in the Supreme Court of the United States are: Waring *vs.* Clark (1846), 5 *How.* 441; The Propeller Genesee Chief *vs.* Fitzhugh (1851), 12 *How.* 443; The Moses Taylor (1866), 4 *Wall.* 411; Insurance Co. *vs.* Dunham (1870), 11 *Wall.* I; Leon *vs.* Galceran (1870), 11 *Wall.* 185; *Ex parte* Boyer (1884), 109 *U. S.* 629; Manchester *vs.* Massachusetts (1891), 139 *U. S.* 240. Emlin McClain.

ADMISSION OF STATES. See States, Admission of.

ADULTERATION. See Pure Food.

ADVISORY OPINIONS. The primary and essential function of a court is to decide cases or controversies between parties directly interested or, in its criminal jurisdiction, between the state and persons charged with crimes; but under our constitutional system which contemplates the determination by courts of the validity of legislative and executive acts when involved in the determination of cases submitted for decision, our courts exercise a peculiar function as a coördinate branch of government. Recognizing this peculiar function the constitutions of four states (Massachusetts, Maine, New Hampshire, and Rhode Island) authorize the submission to the supreme court judges of questions relating to the constitutionality and construction of existing or proposed legislation and like questions of public interest. In certain other states judges are authorized to suggest improvements in the law for legislative action. The opinions or suggestions are advisory only, for they do not determine any cases submitted to the judges for decision; and while entitled to respect, they are not precedents binding on the courts in subsequent cases coming before them in the same sense that their regular decisions are regarded as binding. The reason for denying to such opinions full weight and authority as precedents is that in giving such opinions the judges are not called upon to exercise the judicial function and have not the benefit of arguments of counsel directly interested in presenting in the strongest light the claims of adverse parties as they have in a litigated case. Under the Bowman Act of March 3, 1883,

claims may be referred by Congress to the Court of Claims, which reports its findings but does not enter judgment.

The President of the United States has no authority to submit to the judges of the Supreme Court questions for their opinion, and judges of state courts have no authority to announce opinions in response to questions submitted to them by the executive or the legislature save as such submission is specially provided for in the constitution.

See Bowman Act; Courts, Federal; Judicial Power, Theory of; Law, Constitutional, American; State Judiciary; Unconstitutional Legislation.

Reference: T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 72.

Emlin McClain.

AERIAL NAVIGATION, REGULATION OF. Bills covering aerial navigation have been introduced in a number of legislatures, but the only such bill which has been passed is the Forbes Bill, passed by the Connecticut legislature June 11, 1911. The bill requires state registration of airships and state licensing of pilots. It authorizes an aerial pilot to navigate over water or over property owned or leased by him, or over which he has received permission to fly. If he wishes to fly more widely, he must be licensed by the Secretary of State, subsequent to an examination entirely at the discretion of the Secretary of State.

Such licenses are of three classes: (1) for the operation of spherical balloons; (2) for the operation of dirigible balloons; (3) for the operation of heavier-than-air machines. All licenses are annual and expire on the last day of February of each year.

Aerial pilots having licenses in other states may fly over Connecticut. Those from states not issuing licenses must secure a Connecticut license before flying over that state.

The law places on the aerial pilot the responsibility for all damages caused by any airship directed by him, or if he is an agent or employee, his principal will be held responsible.

The law prohibits issuing of licenses to persons under the age of twenty-one years.

The fees are as follows:

For the registration of an airship	$5.00
For pilot license	2.00
For examination of pilot not to exceed	25.00

The penalties are a fine not more than $100, or imprisonment for not more than six months, or both, to persons flying an airship in Connecticut without complying with the provisions of the law.

Foreign opinion, in conferences at Heidelberg, in September, 1911, and Paris, in November, 1911, has declared in favor of the principle that the air is free to all airships, except so far as the safety and defence of the subjacent territory may make regulation necessary. An English law gives a secretary of state rights of prohibiting aerial navigation over certain areas.

See Commerce, Governmental Control of.

References: Berkeley Davis, *Law of Motor Vehicles, with a Chapter on the Law of Aviation* (1911); *Am. Year Book, 1912,* 231.

R. G. Whitman.

AFRICA, DIPLOMATIC RELATIONS WITH

Negotiations with Barbary Powers.—At the time of the American Revolution commerce in the Mediterranean was constantly subject to the ravages of the Barbary States, Morocco, Tripoli, Algiers, and Tunis, which had long made piracy a business. Some security had been afforded to American vessels while they sailed under the British flag, but after the Treaty of Paris they seriously suffered from the piracies of the corsairs. In 1784 Congress authorized the negotiation of treaties with the Barbary Powers securing American commerce. Adams and Jefferson met the Tripolitan envoy at London and found that while Congress had appropriated but $80,000 for the purpose, the price of peace with the four powers would be at least a million. The United States followed the example of the European states and sought to secure a measure of immunity by negotiation. Thomas Barclay, in 1787, signed a treaty with the Emperor of Morocco, the first to be negotiated without the use of presents or the promise of tribute. This treaty, which was to last fifty years, provided that the commerce of the United States should be on the same basis as that of Spain, or of the most-favored nation, that all captured Americans should be set free, that the United States should have consular representation in Morocco, and that no American vessel should be attacked in Moorish waters by any power with which the United States might be at war.

The treaty with Algiers, negotiated in 1795, which was, in terms, similar to the one with Morocco, proved expensive to the United States, as Congress within two years made an appropriation of a million dollars for ransom and presents for the Dey. During the War of 1812 the failure of Algiers to maintain neutrality led to war with the United States. An American squadron proceeded to Algiers in 1815 and a treaty was at once signed by which all American prisoners were surrendered. No presents or tribute were given. Another treaty of peace and friendship was negotiated in 1816 which ceased to be effective in 1830 when France absorbed Algiers by conquest.

Joel Barlow signed a treaty with the Ba-

shaw of Tripoli in 1796 by which tribute was formally abolished. Annual presents, however, were sent to the Bashaw which seemed to him inadequate and he threatened war. As an answer a naval force blockaded Tripoli in 1805, and after a series of singular and dramatic episodes a new treaty was negotiated which secured the release of all American captives.

The treaty with the Bey of Tunis was negotiated in 1797 by a French merchant acting under Barlow's instructions. It was similar to the one with Morocco. In 1827 it was modified and continued in force even after Tunis became a French protectorate in 1881. The various treaties with the Barbary States cost the United States more than two and a half millions of dollars and availed little. The United States obtained freedom from piratical annoyance by the use of force.

Slave Trade.—The African slave-trade, characterized in the Treaty of Ghent (1814) as "irreconcilable with the principles of humanity and justice" and further condemned by the Congresses of Vienna (1815) and Verona (1822), was declared to be piracy by Act of Congress in 1820. In 1824 a treaty for its suppression was concluded with Great Britain. As mutual right of visitation and search was introduced as a means of accomplishing this, the convention was not favorably acted upon by the Senate. Insistence upon this right of search was met by increased sensitiveness on the part of the United States, resulting in a refusal to adhere to the Quintuple Treaty of 1841 by which the greater European powers accepted England's position. In the Ashburton Treaty of 1842 the United States and Great Britain agreed upon a joint-cruising arrangement for the west coast of Africa. Additional agreements were made in 1862, 1863, and 1870. With the abolition of slavery in America the slave-trade was confined to the east coast and the interior of Africa. The Brussels Conference of 1890 enacted a stringent General Act for the extinction of this traffic, to which the United States is a party.

Egypt.—Owing to the peculiar status of Egypt as a semi-sovereign state, the United States has had no direct relations with the Khedive. What treaties have been negotiated by the Egyptian Government have been made with the express consent of Turkey, under the *firman* of the Sultan. Certain questions of a diplomatic character have been transacted between the consul-general of the United States and the Khedival Government. In 1880 the United States, at the request of the Khedive, informally adhered to the plan of the commission for the liquidation of the Egyptian debt. In 1884 an agreement signed by the Egyptian minister of foreign affairs and the American vice-consul-general adopted as a basis for commerce and customs the convention between Egypt and Greece, thereby putting the United States upon a most-favored-nation basis.

Zanzibar.—The treaty signed by Edmund Roberts in 1833 with the Sultan of Muscat, which conceded extraterritorial rights to American citizens, affected Zanzibar then a part of that Sultan's dominions. These rights were confirmed by the Sultan of Zanzibar in 1886. After the possessions of the Sultan became a British protectorate the United States surrendered its rights under the Anglo-American convention of 1905.

Abyssinia.—Menelik II, Negus of Abyssinia, or King of Ethiopia, in 1903 signed a treaty with a representative of the United States regulating commercial matters in which the most-favored-nation privileges were granted to this country.

Algeciras Conference.—By the Madrid treaty of 1880, to which the United States was a party, all foreigners were accorded the right of holding property within Moroccan territories, and each signatory was put upon a most-favored-nation basis. Because of this participation by the United States in the difficult question of Moroccan affairs, the United States was represented at the Algeciras Conference of 1906. The American delegates took no very active part in the conference, but their services were afterwards alluded to by Prince von Bülow, the German chancellor, as contributing greatly to the peace of the world in assisting in making possible the general act of the conference. The signatures of the American representatives were made "without assuming obligation or responsibility for the enforcement" of the treaty. The Senate ratified the Algeciras Treaty "without purpose to depart from the traditional American foreign policy."

See BARBARY STATES, DIPLOMATIC RELATIONS WITH; EGYPT; EXTRATERRITORIALITY; DEPENDENCIES; NAVIGATION OF INTERNATIONAL RIVERS; PROTECTORATES; RECOGNITION OF NEW STATES; STATES, EQUALITY OF; TERRITORY IN INTERNATIONAL LAW.

References: Eugene Schuyler, *Am. Diplomacy* (1886), 193–232; T. Lyman, Jr., *Diplomacy of the U. S.* (2d ed., 1828), II, 335–405; W. H. Trescot, *Diplomatic Hist. of the Administrations of Washington and Adams* (1857), 267–274; J. B. Moore, *Digest of Int. Law* (1906), II, 914–951, V, 391–401; W. E. B. DuBois, *Suppression of the African Slave-Trade* (1896).

J. S. REEVES.

AGENT, DIPLOMATIC. See DIPLOMATIC AGENT.

AGREEMENTS BETWEEN STATES. See STATES, COMPACTS BETWEEN.

AGREEMENTS, DIPLOMATIC. See DIPLOMATIC AGREEMENTS.

AGRICULTURAL EDUCATION. See EDUCATION, AGRICULTURAL.

AGRICULTURAL EXPERIMENT STATIONS. The experiment stations in the United States are units in a federal or national plan, supported by the general government for the purpose of making original researches and verifying experiments in the physical, chemical, biological and other scientific problems underlying the practice of agriculture. The Hatch Act of 1887 carried an appropriation to each state of $15,000. It is virtually a supplement to the Morrill Act of 1862 (*see* MORRILL GRANT FOR AGRICULTURAL COLLEGES). Nearly all the stations are connected directly with the colleges of agriculture and mechanic arts founded on the act of 1862. A second experiment station statute, extending the work of the institutions by increasing the total annual appropriation to each state to $30,000, was passed through the leadership of H. C. Adams of Wisconsin in 1906.

Before the federal acts, some experiment stations had been established: Houghton Farm, in Orange County, N. Y., maintained by Lawson Valentine from 1876 to 1888; in Connecticut under the joint support of Orange Judd and the state, in 1875, the state later assuming full responsibility; in California in 1873 (with a legislative grant in 1877); in North Carolina in 1877; at Cornell University in 1879; in New Jersey in 1880; in New York State and in Ohio in 1882; and in a number of others before the passage of the Congressional act in 1887. Some of these state and separate stations are now maintained in flourishing condition, and they form essentially a part of the general American plan of publicly supported institutions for investigation and research in agriculture.

The work of the experiment stations has direct connection with the United States Department of Agriculture through its Office of Experiment Stations established in 1888. This office also directly manages experiment stations in Alaska, Hawaii, Porto Rico and Guam. Its function in general is to promote the interests of investigation, to collect information for the stations, and to inspect their accounts, to give them advice, and to publish abstracts of the work accomplished by them. It also undertakes investigation on its own account.

The results of the experiment station work are made public through bulletins and reports, lectures, correspondence, class-room instruction in the colleges, demonstration plats in the communities, and general publicity through the press. The summary results are collected in the monthly *Experiment Station Record* published by the Office of Experiment Stations.

The experiment stations have been powerful factors in redirecting the practice and the point of view in American farming. Some of the states liberally supplement the federal appropriations. The staffs include numbers of highly trained specialists, and the published material is increasing in permanent importance as well as in volume. Their office is to supply information on the problems of agriculture along the lines of natural science, and it is the responsibility of the farmer to work out its application in his own business and in his own way.

See AGRICULTURE, RELATIONS OF GOVERNMENT TO; EXPERIMENT STATIONS, OFFICE OF; LABORATORIES, PUBLIC.

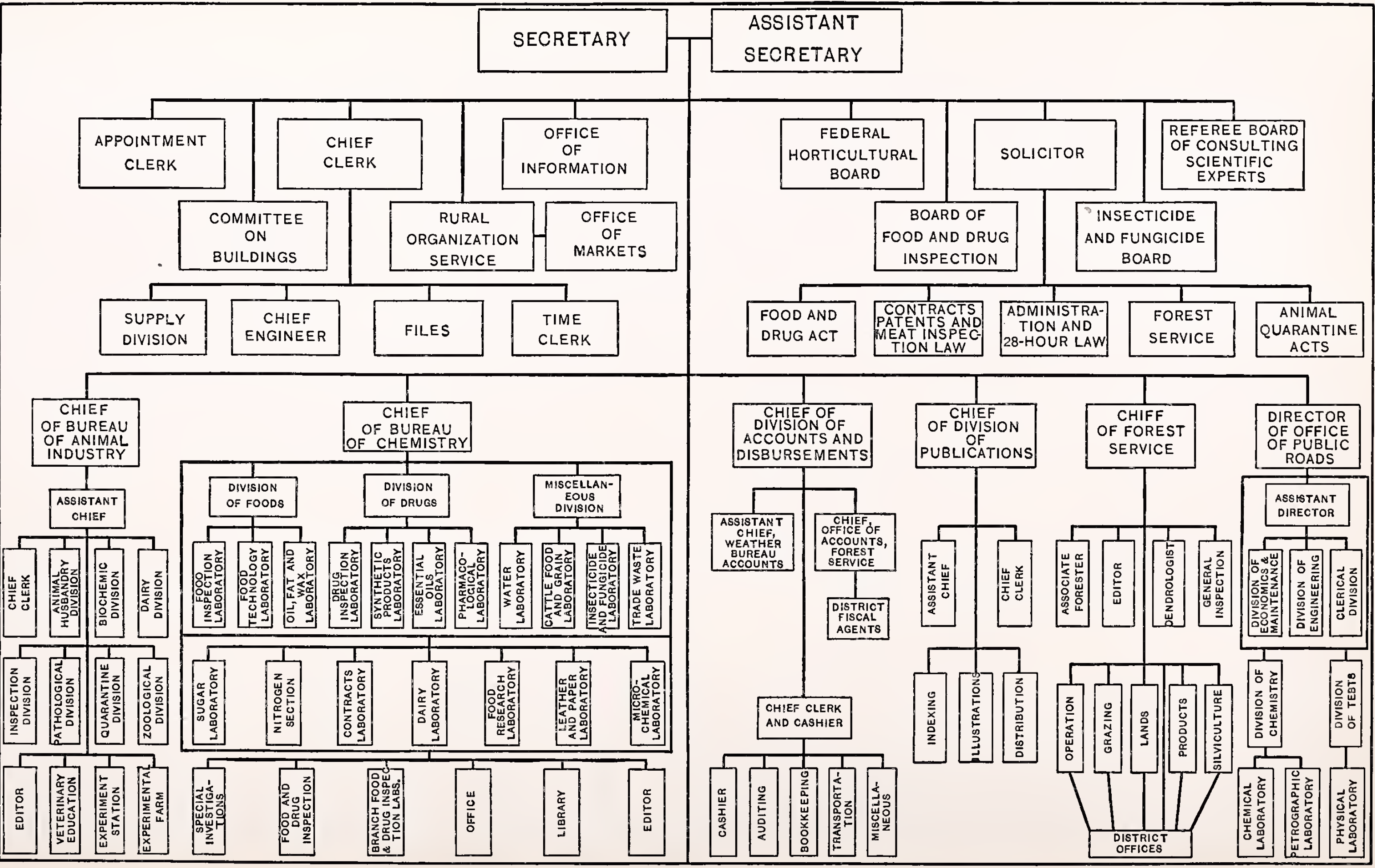
References: Office of Experiment Stations and separate stations, *Annual Reports* and other publications. L. H. BAILEY.

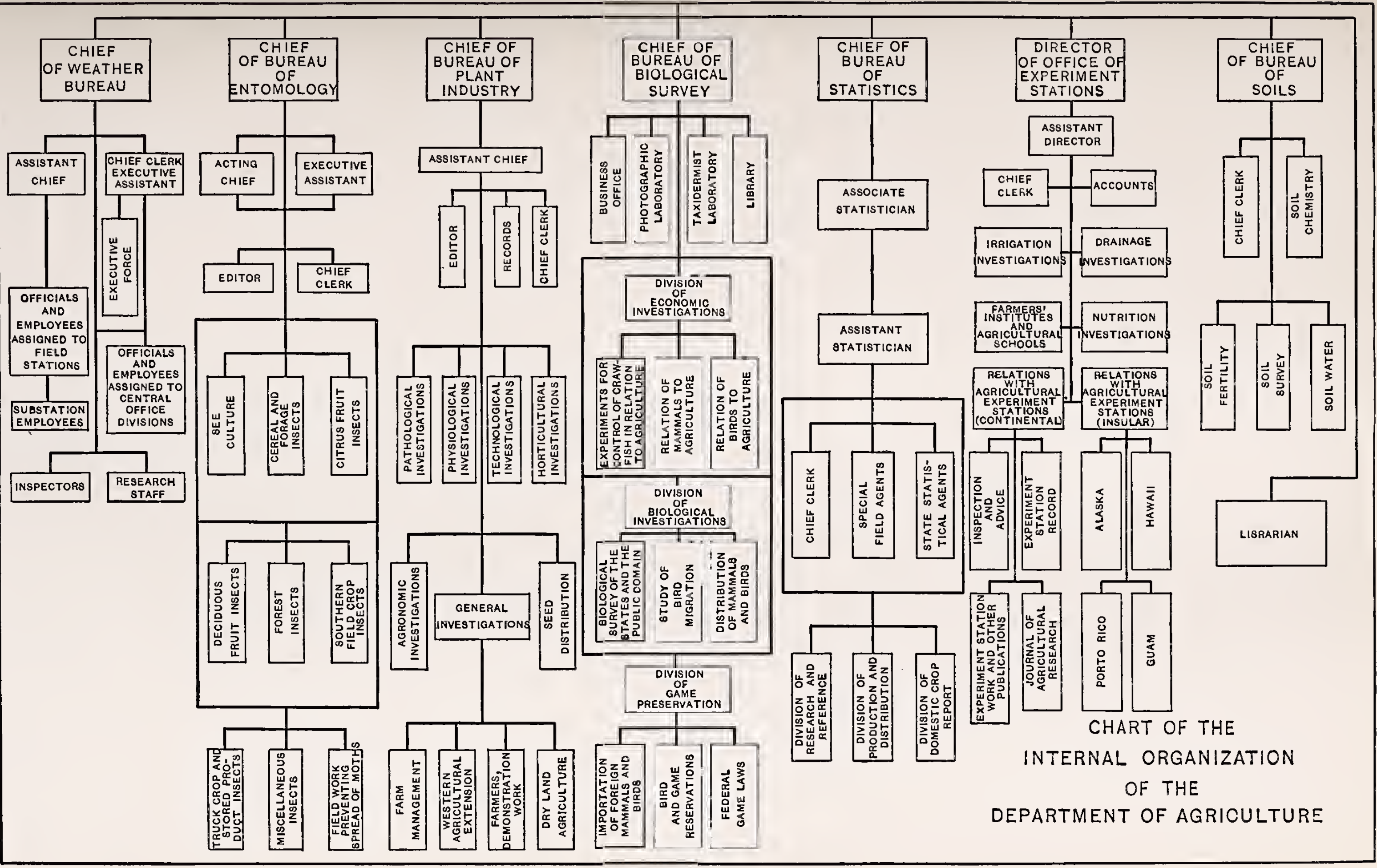
AGRICULTURAL FAIRS. See FAIRS, AGRICULTURAL.

AGRICULTURE, DEPARTMENT OF

Organization.—The Department of Agriculture was created by the act of May 15, 1862, with a Commissioner of Agriculture at the head. By act of February 9, 1889, it was raised to the dignity of an executive department, with a Secretary having a seat in the Cabinet. The department has jurisdiction of an advisory character over the agricultural affairs of the country. The Secretary appoints all officers and employees, excepting the Assistant Secretary and the Chief of the Weather Bureau, who are appointed by the President. He exercises advisory jurisdiction over the agricultural experiment stations that receive federal aid; controls quarantine stations for both imported cattle and cattle in interstate commerce; directs meat inspection and the execution of food and drug laws; and issues regulations relative to national forest reserves. An assistant secretary, chief clerk, appointment clerk and chief of the supply division exercise the jurisdiction which their titles imply. The solicitor acts as legal advisor of the Secretary, represents the department in all legal proceedings, supervises the preparation of departmental regulations, and is a member of the board of food and drug inspection.

Weather Bureau.—The Chief of the Weather Bureau has charge of weather forecasts, including the display of warnings of storms, cold waves, frosts and floods, for the benefit of agriculture and navigation; the maintenance and operation of weather-service telephone, cable and telegraph lines, the collection and transmission of marine intelligence for the benefit of commerce and navigation; the reporting of temperature and rainfall conditions for agricultural staples; the conduct of investi-


SECRETARY
ASSISTANT SECRETARY
APPOINTMENT CLERK
CHIEF CLERK
OFFICE OF INFORMATION
FEDERAL HORTICULTURAL BOARD
SOLICITOR
REFEREE BOARD OF CONSULTING SCIENTIFIC EXPERTS
COMMITTEE ON BUILDINGS
RURAL ORGANIZATION SERVICE
OFFICE OF MARKETS
BOARD OF FOOD AND DRUG INSPECTION
INSECTICIDE AND FUNGICIDE BOARD
SUPPLY DIVISION
CHIEF ENGINEER
FILES
TIME CLERK
FOOD AND DRUG ACT
CONTRACTS PATENTS AND MEAT INSPECTION LAW
ADMINISTRATION AND 28-HOUR LAW
FOREST SERVICE
ANIMAL QUARANTINE ACTS
CHIEF OF BUREAU OF ANIMAL INDUSTRY
ASSISTANT CHIEF
CHIEF CLERK
ANIMAL HUSBANDRY DIVISION
BIOCHEMIC DIVISION
DAIRY DIVISION
INSPECTION DIVISION
PATHOLOGICAL DIVISION
QUARANTINE DIVISION
ZOOLOGICAL DIVISION
EDITOR
VETERINARY EDUCATION
EXPERIMENT STATION
EXPERIMENTAL FARM
CHIEF OF BUREAU OF CHEMISTRY
DIVISION OF FOODS
DIVISION OF DRUGS
MISCELLANEOUS DIVISION
FOOD INSPECTION LABORATORY
FOOD TECHNOLOGY LABORATORY
OIL, FAT AND WAX LABORATORY
DRUG INSPECTION LABORATORY
SYNTHETIC PRODUCTS LABORATORY
ESSENTIAL OILS LABORATORY
PHARMACOLOGICAL LABORATORY
WATER LABORATORY
CATTLE FOOD AND GRAIN LABORATORY
INSECTICIDE AND FUNGICIDE LABORATORY
TRADE WASTE LABORATORY
SUGAR LABORATORY
NITROGEN SECTION
CONTRACTS LABORATORY
DAIRY LABORATORY
FOOD RESEARCH LABORATORY
LEATHER AND PAPER LABORATORY
MICRO-CHEMICAL LABORATORY
SPECIAL INVESTIGATIONS
FOOD AND DRUG INSPECTION
BRANCH FOOD & DRUG INSPECTION LABS.
OFFICE
LIBRARY
EDITOR
CHIEF OF DIVISION OF ACCOUNTS AND DISBURSEMENTS
ASSISTANT CHIEF, WEATHER BUREAU ACCOUNTS
CHIEF, OFFICE OF ACCOUNTS, FOREST SERVICE
DISTRICT FISCAL AGENTS
CHIEF CLERK AND CASHIER
CASHIER
AUDITING
BOOKKEEPING
TRANSPORTATION
MISCELLANEOUS
CHIEF OF DIVISION OF PUBLICATIONS
ASSISTANT CHIEF
CHIEF CLERK
INDEXING
ILLUSTRATIONS
DISTRIBUTION
CHIFF OF FOREST SERVICE
ASSOCIATE FORESTER
EDITOR
DENDROLOGIST
GENERAL INSPECTION
OPERATION
GRAZING
LANDS
PRODUCTS
SILVICULTURE
DISTRICT OFFICES
DIRECTOR OF OFFICE OF PUBLIC ROADS
ASSISTANT DIRECTOR
DIVISION OF ECONOMICS & MAINTENANCE
DIVISION OF ENGINEERING
CLERICAL DIVISION
DIVISION OF CHEMISTRY
DIVISION OF TESTS
CHEMICAL LABORATORY
PETROGRAPHIC LABORATORY
PHYSICAL LABORATORY


CHIEF OF WEATHER BUREAU
ASSISTANT CHIEF
CHIEF CLERK EXECUTIVE ASSISTANT
EXECUTIVE FORCE
OFFICIALS AND EMPLOYEES ASSIGNED TO FIELD STATIONS
SUBSTATION EMPLOYEES
OFFICIALS AND EMPLOYEES ASSIGNED TO CENTRAL OFFICE DIVISIONS
INSPECTORS
RESEARCH STAFF
CHIEF OF BUREAU OF ENTOMOLOGY
ACTING CHIEF
EXECUTIVE ASSISTANT
EDITOR
CHIEF CLERK
BEE CULTURE
CEREAL AND FORAGE INSECTS
CITRUS FRUIT INSECTS
DECIDUOUS FRUIT INSECTS
FOREST INSECTS
SOUTHERN FIELD CROP INSECTS
TRUCK CROP AND STORED PRODUCT INSECTS
MISCELLANEOUS INSECTS
FIELD WORK PREVENTING SPREAD OF MOTHS
CHIEF OF BUREAU OF PLANT INDUSTRY
ASSISTANT CHIEF
EDITOR
RECORDS
CHIEF CLERK
PATHOLOGICAL INVESTIGATIONS
PHYSIOLOGICAL INVESTIGATIONS
TECHNOLOGICAL INVESTIGATIONS
HORTICULTURAL INVESTIGATIONS
AGRONOMIC INVESTIGATIONS
GENERAL INVESTIGATIONS
SEED DISTRIBUTION
FARM MANAGEMENT
WESTERN AGRICULTURAL EXTENSION
FARMERS' DEMONSTRATION WORK
DRY LAND AGRICULTURE
CHIEF OF BUREAU OF BIOLOGICAL SURVEY
BUSINESS OFFICE
PHOTOGRAPHIC LABORATORY
TAXIDERMIST LABORATORY
LIBRARY
DIVISION OF ECONOMIC INVESTIGATIONS
EXPERIMENTS FOR CONTROL OF CRAWFISH IN RELATION TO AGRICULTURE
RELATION OF MAMMALS TO AGRICULTURE
RELATION OF BIRDS TO AGRICULTURE
DIVISION OF BIOLOGICAL INVESTIGATIONS
BIOLOGICAL SURVEY OF THE STATES AND THE PUBLIC DOMAIN
STUDY OF BIRD MIGRATION
DISTRIBUTION OF MAMMALS AND BIRDS
DIVISION OF GAME PRESERVATION
IMPORTATION OF FOREIGN MAMMALS AND BIRDS
BIRD AND GAME RESERVATIONS
FEDERAL GAME LAWS
CHIEF OF BUREAU OF STATISTICS
ASSOCIATE STATISTICIAN
ASSISTANT STATISTICIAN
CHIEF CLERK
SPECIAL FIELD AGENTS
STATE STATISTICAL AGENTS
DIVISION OF RESEARCH AND REFERENCE
DIVISION OF PRODUCTION AND DISTRIBUTION
DIVISION OF DOMESTIC CROP REPORT
DIRECTOR OF OFFICE OF EXPERIMENT STATIONS
ASSISTANT DIRECTOR
CHIEF CLERK
ACCOUNTS
IRRIGATION INVESTIGATIONS
DRAINAGE INVESTIGATIONS
FARMERS' INSTITUTES AND AGRICULTURAL SCHOOLS
NUTRITION INVESTIGATIONS
RELATIONS WITH AGRICULTURAL EXPERIMENT STATIONS (CONTINENTAL)
RELATIONS WITH AGRICULTURAL EXPERIMENT STATIONS (INSULAR)
INSPECTION AND ADVICE
EXPERIMENT STATION RECORD
ALASKA
HAWAII
EXPERIMENT STATION WORK AND OTHER PUBLICATIONS
JOURNAL OF AGRICULTURAL RESEARCH
PORTO RICO
GUAM
CHIEF OF BUREAU OF SOILS
CHIEF CLERK
SOIL CHEMISTRY
SOIL FERTILITY
SOIL SURVEY
SOIL WATER
LIBRARIAN
CHART OF THE
INTERNAL ORGANIZATION
OF THE
DEPARTMENT OF AGRICULTURE

gations in climatology and temperature; and the taking of meteorological observations. He exercises supervision over the weather stations located in this country and the West Indies. Attached to the bureau are an assistant chief, a chief clerk, chiefs of the forecast, instrument and marine divisions and of the river and flood service; chiefs of the climatological, publication, supplies and telegraph divisions; a librarian; the heads of four forecast divisions with headquarters at Chicago, San Francisco, Portland, Oregon, New Orleans and Denver, and inspectors located at Detroit and Milwaukee. The research staff at Mount Weather, Va., consists of the executive officer in charge, the heads of the physical laboratory, solar radiation work, upper-air research, and the editor of the weather bulletin.

Bureau of Animal Industry.—The Bureau of Animal Industry conducts the inspection of animals and food products and, under the law of June 29, 1906, of animals in transit (*see* MEAT INSPECTION). It supervises quarantine stations for imported live stock; makes investigations of communicable diseases of animals, and of the breeding and feeding of animals, and supervises the manufacture of and commerce in renovated butter (*see* OLEOMARGARINE TAX).

Bureau of Plant Industry.—The Bureau of Plant Industry carries on scientific investigations concerning the various phases of plant life, with a view to prevent disease and devastation, increase the fertility of the soil, advance the breeding of plants, reclaim arid lands, better the management of farms, standardize grains, and promote water-purification and tea culture. To this bureau is committed the supervision of the purchase, for distribution by members of Congress, of flower and garden seeds (*see* SEEDS, PUBLIC DISTRIBUTION OF).

Forest Service.—The Forest Service not only has charge of the national forest reserves, but it also coöperates with state governments and private owners in the handling of forests and the utilization of forest products. It tests the strength and durability of construction timbers, railroad ties and telegraph poles, and investigates methods to secure durability. It deals with the question of forest fires, and advises as to state legislation to promote holding and protecting growing timber. It is charged, also, with the conservation (*see*) of government forest reserves containing 400 billion feet of timber, and with water-powers estimated at 15 million horse-power.

Bureau of Chemistry.—The Bureau of Chemistry has charge of the enforcement of the pure food and drug act of June 30, 1906, and in furtherance of this work, conducts experiments and makes analyses to ascertain the nutritive values of foods and the effects of drugs on the human system. It inspects the conditions of manufacture, transportation and sale of food and drug products to determine questions of adulteration and misbranding. It decided in 1910 that 37 per cent of the foods imported at New York were illegal because injurious to health or falsely branded or labeled. It also makes tests of articles of export and coöperates with other government departments and with state authorities to improve the quality of foods and drugs. About 40 per cent of the samples analyzed in 1910 were reported illegal (*see* DRUGS, PUBLIC REGULATION OF).

Bureau of Statistics.—The Bureau of Statistics prepares the crop reports which are a large influence in determining values on the exchanges. It has the coöperation of 46,000 township, county and state agents and special field agents, in collecting information, and it records, tabulates and coördinates statistics of agricultural production, distribution and consumption obtained from foreign governments and from various local agencies (*see* CROP REPORTS).

Bureau of Soils.—The Bureau of Soils issues maps showing the extent, distribution and characteristic properties of soil types in all portions of the country, and suggests methods of improvement. It investigates the fundamental causes of fertility, of low-yield of crops, and of erosion. Since the work began in 1899, more than 360,000 square miles in 26 states have been surveyed and mapped.

Bureau of Entomology.—The Bureau of Entomology investigates and makes public information regarding injurious insects affecting crops, fruits and forests; it studies the diseases of insects in relation to the diseases of man; introduces beneficial insects and insecticide machinery; and it coöperates with the national museum and public institutions and private individuals in relation to classification and identification.

Biological Survey.—The Bureau of Biological Survey investigates the economic relations of birds and mammals, enforces laws for the protection of the Alaskan birds and game, has charge of the national bird reservations and the bison range, and studies the geographical distribution of animals. The work has been broadened by the discovery that native wild animals disseminate bubonic plague and spotted fever; and also by the assumption by the Government (1913) of the custody and protection of migratory birds.

Publications.—The Division of Publications superintends the publication of the *Yearbook*, one of the most popular of government publications; edits the various bulletins and reports, and assigns the expenditure of the annual printing fund of the department, amounting to nearly half a milllion dollars.

Experiment Stations.—The Office of Experiment Stations supervises the stations existing in all states and territories as well as in Hawaii, Alaska, Porto Rico and Guam. It coöperates with the agricultural colleges (*see* EDUCATION, AGRICULTURAL), and publishes ac-

counts of investigations in various parts of the world, and it aims to promote the efficiency of farmers' institutes. The cost of these stations in 1912 was $2,901,206, of which amount $1,000,000 came from state governments.

Public Roads.—The Office of Public Roads furnishes expert advice on road construction, maintenance and administration and coöperates with colleges and schools in highway engineering instruction. In 1910, about 114 miles of road was constructed, thereby inducing the building of 730 miles by local authorities.

Efficiency.—The annual appropriation of the department in 1913 amounted to more than 18 million dollars, of which 2 millions represent the cost of the Bureau of Animal Industry, and $1,700,000 expenses of the Weather Bureau. The number of officials was nearly 3,000, and the publications numbered 2,000 different bulletins, circulars and reports, with a circulation of over 25 million copies. The very rapid growth of the department, the wide range of its activities, and the effectiveness of its work are due largely to the fact that since its establishment in 1889, there have been but five changes in the office of Secretary. The first Secretary, Norman J. Coleman, served but a few days. He was succeeded by Jeremiah M. Rusk who served four years, giving place to J. Sterling Morton, who served for a like term. The expansion of the Department came during the administration of James Wilson (*see*) who served during the administrations of Presidents McKinley, Roosevelt and Taft, a period of 16 years, the longest term ever served by a Cabinet officer. The present Secretary is David F. Houston.

See Agricultural Experiment Stations; Agriculture, Relations of Government to; Cabinet; Executive Departments; bureaus, divisions and officers by name.

References: Dept. of Agriculture, *Reports;* M. L. Hinsdale, *History of the President's Cabinet* (1911); H. B. Learned, *The President's Cabinet* (1911); F. J. Haskin, *The Am. Gov.* (1912), 117–142. Charles Moore.

AGRICULTURE, RELATIONS OF GOVERNMENT TO. Government may aid agriculture by supporting institutions and by making laws. It is now a recognized function of government to promote the agricultural interests of a nation by the use of both these means.

Agricultural Law.—The Government of the United States exerts itself in both these ways. In institutions, it supports the Department of Agriculture; and it established and partly maintains a great series of colleges and experiment stations. The state governments, for the most part, support a department or board of agriculture, or a similar unit, and they contribute to the support of the chain of colleges and experiment stations established by the acts of 1862 and 1887 (*see* Morrill Grant for Agricultural Colleges).

The body of agricultural law is considerable, both national and state, relating mostly to quarantine and inspection for the control of diseases, parasites and pests in animals and plants; also to adulteration of foods, to meat inspection, regulation of manufacture and sale of dairy products, standards for fruit and other packages, control of fertilizers and feeding-stuffs and of seeds. There is also a large body of fish and game law that more or less directly concerns agricultural practice and interests.

There is no political or nationalized body of agrarian law as such, in the United States, although many of the particular groups of law are highly specialized, as are irrigation laws, and apply to great geographical areas. There has been no close study, at least in accessible form, of the underlying philosophy of agricultural law as it applies to the United States.

State Agricultural Institutions.—In the establishing of institutions, the state governments have not been strong. A number of the states are now, however, establishing special schools for agriculture as well as more liberally supporting the agricultural colleges and the experiment stations. The state departments of agriculture are undeveloped, as a rule. An inquiry made in 1909 showed 31 states maintaining distinct departments of agriculture, although there is no uniformity in either the organization or the operations as between the different states. In a number of the states, the department of agriculture is combined with other governmental work, such as commerce, industries, mining, immigration, labor. In some cases, the department appears to exist largely for the purpose of attracting settlers. In a few of them the responsible officer forms part of what may be called a governor's cabinet.

The primary purpose of a state department of agriculture is to enforce the body of agricultural law, to exercise police power, and in general to protect and fortify the industry. It will find a very useful field in collecting statistics, disseminating information, aiding voluntary societies, supervising or conducting fairs, coöperating with educational work and institutions, and presenting the agricultural situation to the people on its regulatory side.

Federal Department of Agriculture.—The Federal Government has developed its agricultural work strongly in the United States Department of Agriculture. This great department was separately established in 1862. In 1887 came the act establishing the experiment stations, and in 1889 that raising the Department of Agriculture to coördinate rank with other executive departments and placing its administrative head in the President's Cabinet.

About fifteen administrative and other independent units comprise the department as now organized. The total numbers of employees is about 14,000. Its work covers the whole range of agricultural activity, police power, investigation, education, promulgation.

Other Federal Service.—The Government of the United States carries certain other work more or less agricultural in nature: the collecting of information by the Department of State through its consular service (*see*); the collecting by the Treasury Department of revenues on articles and materials made from agricultural products; extending the mail service by means of the rural free delivery (*see*); regulating sale and settlement of public lands; the reclamation service; and the educational service in the Department of the Interior; and much of the commercial and supervisory work of the Department of Commerce.

See Agriculture, Department of; Country Life Commission; Crop Reports; Education, Agricultural; Fairs, Agricultural; Grangers; Seeds, Public Distribution of.

References: L. H. Bailey, *Cyclopedia of Am. Agriculture* (1909), *The State and the Farmer* (1908), *Country-Life Movement* (1911); Sir Horace Plunkett, *The Rural Life Problem of the United States* (1910); H. C. Taylor, *Agricultural Economics* (1905); T. N. Carver, *Principles of Rural Economics* (1911).

L. H. Bailey.

AGRICULTURE, SECRETARIES OF. Following is a list of Secretaries of Agriculture from the establishment of the department until March, 1913:

1889 (Feb. 13)—1889 (Mar. 5) Norman J. Coleman.
1889 (Mar. 5)—1893 (Mar. 6) Jeremiah M. Rusk.
1893 (Mar. 6)—1897 (Mar. 5) Julius Sterling Morton.
1897 (Mar. 5)—1913 (Mar. 4) James Wilson, recommissioned Mar. 5, 1901; Mar. 6, 1905; Mar. 5, 1909.
1913 (Mar 5)—David F. Houston.

See Agriculture, Department of; Cabinet of the President.

References: M. L. Hinsdale, *Hist. of the President's Cabinet* (1911); H. B. Learned, *President's Cabinet* (1911). A. B. H.

ALABAMA

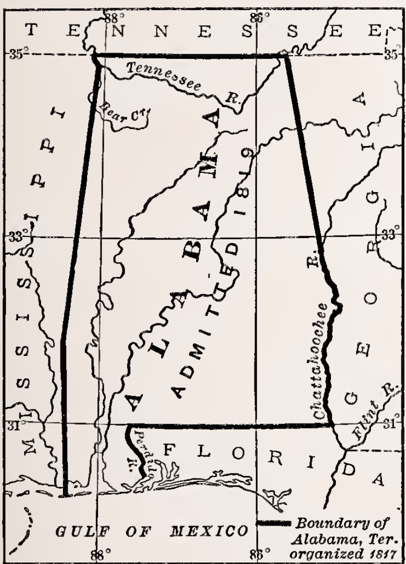
Early History.—Alabama is geographically the Alabama-Tombigbee River Basin, and was historically the original seat of the French colonization of Louisiana. Mobile, founded 1702, was the capital until, in the time of Law's Company, the Mississippi Valley attracted attention. In 1763 it became British and in 1781 Spanish. The British colony of Georgia, founded 1732, claimed the interior under its charter, but finally ceded to the United States all west of the Chattahoochee River, and after Pinckney's Spanish treaty Mississippi territory was created in 1798, with capital at Natchez. Further east, near the fork of the rivers, grew up St. Stephens, a second American centre. Originally the territory lay between 31° and 32.28°, but in 1804 it was extended to the Tennessee line, and Huntsville, a new American centre, came into being with the Cherokee cession of 1805. In 1813 Mobile was seized from the Spaniards. Thus Mississippi territory was made up of four districts—Mobile, Natchez, St. Stephens and Huntsville, separated by powerful Indian tribes.

On the admission of Mississippi (*see*) as a state in 1817, the remainder of the old territory of Mississippi became the territory of Alabama, and a state two years later with white manhood suffrage. It consisted of thirty-two counties in the eastern three of these old districts. There were from time to time cessions by the Indians, not without friction, and finally with war. The Creek War, growing out of the War of 1812 and conducted by Andrew Jackson, led to opening the fertile Black Belt along the Alabama River and to the ultimate connection of the old sections. Unification was not complete, however, until treaties gradually removed the Indians. This was effected by the same policy as in Mississippi and Georgia—extending the state laws over the Indian districts.

Early Growth and Development.—After the removal of the Indians in the thirties the population increased rapidly. The cotton crop increased from 7,000 bales in 1813 to 40,000 bales in 1840. The Tennessee valley, practically an extension of Tennessee, was populous and influential, and there was always a rivalry between it and the Black Belt and lower counties which had been settled largely from Georgia, and which was the richer part of the state. The mountainous country between the two contained a sparse population. The fourth belt, that of the Gulf, was not populous except about Mobile. The Latin nucleus of this city was soon absorbed by emigration which came from New England as well as the South Atlantic states.

First Constitution.—The first constitution, adopted by the convention which met July 5, 1819, was quite similar to that of Mississippi and other adjacent states. In government it established, as usual, a legislature of two houses, a governor, circuit courts, county courts and other necessary officials. The judges were elected by the legislature to hold office during good behavior, the other officials by the people for short terms. The domestic

institutions were not different from those of adjacent states, and the existence of African slavery, with its tendency toward large cotton plantations, caused a similarity in southern development. Humane treatment of the slaves was required by the constitution, and in trials for felonies they were ensured a jury. This constitution lasted with a few amendments until the Civil War. One amendment was in 1830, when on account of unpopular decisions as to usury the judicial terms were limited to six years. The supreme court had been composed of circuit judges sitting *in banc*, but from 1832 became a separate institution. Circuit courts had administered equity from territorial times and separate chancery courts were instituted in 1839.



BOUNDARIES OF THE STATE OF ALABAMA

The Laws.—The foundation of local law was the Ordinance of 1787 (*see*), and details were added in the *Laws of Mississippi Territory* published by the judges in 1799. These were thought aristocratic, however, and were repealed when the territory acquired a legislature in the same year. An important territorial work was Toulmin's *Digest* in 1807, followed by the *Statutes of the Mississippi Territory* by Edward Turner in 1816. The first law book of Alabama proper was Toulmin's *Laws of Alabama* in 1823, and later came Aikin's *Digest* of 1833 and Clay's in 1843. Under an act of 1850 commissioners codified the laws into what is called the *Code of 1852* which, with amendments, was to last until Walker's *Revised Code* in 1867. Since the Civil War there have been revisions in 1876, 1887, 1897, and 1907.

Civil War and Reconstruction.—A convention called to consider the results of the national election of 1860 followed the example set by South Carolina and seceded January 7, 1861, and the provisional government of the Confederate States was inaugurated in the Alabama capital. *Inter arma silent leges* is true of every theatre of war, but during the American Civil War there was an increasing development not only of the two general governments but on the part of the individual states as well. Alabama revised her constitution and laws to meet the new conditions. If state powers for offence were perhaps better illustrated in New York, Ohio and Illinois because they were distant from the scene of hostilities, the defensive basis of a commonwealth was better illustrated in such a state as Alabama, which at first was free from invasion. Its government took possession of Forts Morgan and Gaines at the mouth of Mobile Bay and of the arsenal at Mt. Vernon on the river as falling again within its sovereign power, and the legislature provided for arming troops and other war expenses, being forced in order to meet them to resort to paper money—now of the state itself, however, instead of a bank as in earlier days.

All went to pieces with the defeat of the Confederate arms. The kindly plans of Lincoln, as worked out by Andrew Johnson, were based on the abolition of slavery, but provided for recognition of the local governments. The state constitution was, accordingly, revised in 1865, recognizing abolition as a *fait accompli* while forbidding intermarriage of the races. This constitution had only a short trial for Congress overturned the plan in 1867, substituted a reconstruction which went on the idea of state suicide, and sought to build up a manhood electorate (excepting all disfranchised for rebellion) before readmitting the state to federal privileges. Congress required that a constitution be adopted by a majority of the registered voters and therefore the people sought to defeat the extreme instrument of 1868 by not voting. Congress, however, then passed a retroactive law which declared the constitution adopted although the majority even of those voting had voted against it. This constitution followed the reconstruction acts and struck out the old limitation of the ballot to the whites, many of whom were disfranchised; and legislation recognizing negro voters soon turned the state over to its ignorant classes. If the census of 1870 is to be relied on, all the whites in a total population of a million exceeded the negroes by about 50,000. The constitution had some new points. It made judges elective by the people, abolished imprisonment for debt, established a board of education with legislative powers, provided for exploiting industrial resources, followed the modern tendency of statutory exemption from debts, and provided for general incorporation laws, subject to amendment. But its good features were

corruptly exercised and the lavish use of funds and credit resulted in overwhelming public debt.

Constitution of 1875.—This condition of affairs could not continue. Either property owners had to take charge of the government or Alabama was to become another Hayti. As result there came an almost bloodless revolution in 1874, and the government passed into the hands of the native whites again. A new constitution was adopted next year which amongst other features cut off local power to make public improvements and to create public debts. The social relations of the two races were regulated by legislation, but negro voting was left to be controlled by moral pressure.

Industrial Development.—The development of the mineral region was the most striking feature of the time, and with some variations this has continued true to the present. Alabama became one of the leading producers of coal and even more of iron which resulted, not only in adding new industries, but in greatly modifying the political control heretofore exercised by the agricultural section. There had to be drastic legislation also before old seats of trade could accommodate themselves to the altered industrial conditions. Railroads hauled products towards tne Atlantic and not to the Gulf of Mexico until after a railroad commission was created in 1881. As the state had readjusted its debts with the somewhat enforced assent of the bondholders, the same process had to be repeated in 1879 with its commercial centre, Mobile. Agricultural counties in the east, the last district acquired from the Indians, also became "strangulated" by railroad debts and passed through similar readjustment. Indeed, there was going on a general economic change. Plantations were breaking up into farms, often with negro tenants, and many people went from the country to the towns, for the drift cityward was marked in Alabama as elsewhere. But the cotton yield never lessened.

Constitution of 1901.—The population was a million and a quarter in 1880, a million and a half ten years later, and the white ratio was growing; but the racial friction gradually became unbearable. On one side was the determination of the whites, based on sad experience, to rule the state. On the other was the tendency of the negro to follow any adventurer from a distance. The final solution was the adoption of a new constitution in 1901 which followed those of other southern states in eliminating the negro vote so far as the federal amendments permitted. A simple educational qualification was impossible, because it would eliminate a good many of the white voters necessary to the adoption of the constitution, and so the process was twofold—a provision for temporary registration with the "grandfather clause" (*see*) and then, to date from 1903, a more stringent qualification based largely on education. This has given much relief. The new constitution has other favorable features. Corporation laws were made more efficient and the growing evil of local legislation met by requiring local publication of the measure proposed, and by shortening the sessions of the legislature. These had been biennial under the preceding constitution and were now made quadrennial. The facility for calling extra sessions, however, makes this clause somewhat uncertain in actual result, and favors hasty and ill-advised legislation.

Parties.—Like most pioneer communities, Alabama began its political life Democratic. It came into the Union after the time of Jefferson, and Andrew Jackson who had done much to create the state was its first hero. The Senators and Representatives have been generally Democratic except that Mobile and Montgomery, the commercial centres, not infrequently sent Whigs to Congress before the Civil War. There was decided difference of opinion in the convention of 1861 as to the propriety of secession but little as to the right; but after the state seceded there was no division. Old party lines disappeared. Except so far as some Union feeling became apparent in the Tennessee valley after its occupation by the federal forces, Alabamians were a unit for the Confederacy. Not only such prepossessions but the enforced experiment of negro domination and the natural bias of an agricultural community toward free trade has kept Alabama Democratic since the Civil War. This does not mean that there has been no division of opinion as to local affairs. There was a very strong tendency toward the greenback and silver policies in the nineties, and agitation within the party led to the change from nomination by convention to that by primaries. In 1911 there developed a strong tendency toward the commission form of government for cities, and acts were passed for Birmingham, Montgomery and Mobile. Sheffield adopted the system in 1912. In 1912 a third party, the Progressives, polled a vote of 22,680 although the 12 electoral votes were all cast for Woodrow Wilson, the Democratic candidate who received a popular vote of 82,438.

Another indication of the tendency to division on local issues is found in state action on the liquor question. In order to prevent excesses among the country negroes, there has for many years been practical prohibition in the agricultural counties. The recent prohibition wave, however, was felt as strongly in Alabama as in the rest of the South and West, and statewide prohibition was enacted. The attempt failed, however, to put it in the constitution by amendment and this led to a reaction in favor of local option. Under this the larger cities have reinstated licensed sa-

loons while a few of the smaller have dispensaries.

Population.—The population in 1820 was 127,901; in 1860, 964,201; in 1900 1,828,967; in 1910, 2,138,093.

References: The Alabama statutes, etc., are cited *supra*; Alabama constitutions prior to 1901 are found prefixed to Alabama *Code of 1876*, F. N. Thorpe, *Federal and State Constitutions* (1909), I. 89–234. Historical accounts are in W. Brewer, *Alabama* (1872); A. J. Pickett, *Hist. of Alabama* (1851); also revised edition with subsequent *Annals* by T. M. Owen (1900); J. F. H. Claiborne, *Mississippi as Province, Territory, and State* (1880); P. J. Hamilton, *Colonial Mobile* (2d ed., 1910); W. G. Brown, *Hist. of Alabama* (1903); W. L. Fleming, *Civil War and Reconstruction in Alabama* (1905). PETER J. HAMILTON.

ALABAMA CLAIMS. See ALABAMA CONTROVERSY; GENEVA ARBITRATION; NEUTRALITY, PRINCIPLES OF.

ALABAMA CONTROVERSY. Origin of the Claims.—In the *Alabama* claims case against Great Britain before the Geneva tribunal (1872) the United States based its demands on indiscreet haste in issuing the British proclamation of neutrality, concerted action with France, refusal to amend defective neutrality laws, delay in seizing Confederate vessels under construction in British ports, and other unfriendly acts showing lack of due diligence in enforcing neutrality.

The American Government early complained that the proclamation of May, 1861, which accorded belligerent rights to Confederate insurgents and made possible later depredations on American commerce, was an act of unjustifiable intervention. It also complained of the operation of the British neutral policy which was deflected by the persistence of Confederate agents who, using British soil as a base from which the portless Confederacy could direct offensive operations, were aided by the ease of evading the prohibitions of the indefinite and moribund British foreign enlistment act of 1819 and sometimes by connivance of colonial and other officials.

In spite of the vigilance of Charles Francis Adams, who frequently submitted evidence of construction of Confederate vessels under fictitious ownership, the British Government allowed several such vessels to escape and later refused to pursue or seize them. Sailing from English ports and later converted into Confederate privateers by equipment brought from other English ports in other vessels, they began a career resulting in capture or destruction of many American vessels.

The American Government actively and firmly protested against every such violation and kept careful record for future use; and after the middle of 1863, when the British Government became more vigilant, Seward continued to present claims. In reply to demands for reparation Earl Russell entirely disclaimed all responsibility or liability.

Negotiations from 1865 to 1869.—At the close of the war, Russell, in reply to renewed demands of the United States, suggested (August 30, 1865) the appointment of a commission to adjust all war claims "which the two powers shall agree to refer;" but he later repudiated any intention of including the *Alabama* claims. In December, 1865, Lord Clarendon suggested some form of joint consultation with a view to finding a more permanent basis of future relations despite the vague and unsatisfactory points of international law involved, but Adams declined any proposal by which the United States should bear all the consequences of past British policy and secure the British against later application of it to themselves.

In January 1866, Seward proposed arbitration of all questions later designated as *Alabama* claims—including not only direct losses resulting from capture of American vessels and cargoes, but also cost of pursuit, injuries resulting from transfer of the American merchant marine to the British flag, increased insurance and increased length of the war with its increased cost. The British Government would only agree to an arbitration limited to the actual direct losses resulting from the operations of the *Alabama* and similar vessels. This the United States could not accept.

Negotiations finally resulted in the Johnson-Clarendon convention (January 1869) which provided for arbitration of all claims subsequent to the claims treaty of February 8, 1853—without special mention of the *Alabama* claims or recognition of the duties of neutrals or expression of regret for injuries inflicted. This treaty was rejected by the Senate (April 13, 1869) by vote of 51 to 1, following the famous "consequential damages" speech by Sumner upon whom the fate of the treaty practically rested. Little chance of future negotiations remained; and in December 1870, President Grant prepared to assume "responsible control of all demands against Great Britain."

Agreement to Arbitrate (1870–1871).—Meanwhile Secretary Fish, expediently diverging from the views of Sumner by admitting the right of Great Britain to recognize the belligerency of the Confederates, decided that future negotiations for settlement of outstanding difficulties should be conducted at Washington. His opportunity soon came through interviews with Sir John Rose, premier of Canada, who, as an intermediary, suggested an arrangement for reopening negotiations on new lines. With support of the President and in opposition to Sumner, and abandoning Sumner's demand for withdrawal of the British flag from Canada, he decided to

accept the basis finally proposed with the authority of the British Government: the appointment of a joint commission to sit at Washington to settle all outstanding differences between England (or Canada) and the United States, among which the *Alabama* claims were the most important.

Events now moved rapidly. Each government appointed five high commissioners who met at Washington on February 27, and after many conferences, on May 8 signed a treaty which after prompt ratification by both countries, was proclaimed by President Grant (July 4, 1871). It provided for arbitration of the *Alabama* claims, of British citizens' claims against the United States, of the fishery question, and of the San Juan boundary dispute. It contained a formal apology for the escape of the *Alabama* and other Confederate cruisers from British ports and provided that the claims for damages resulting from acts of these cruisers should be submitted to five arbitrators—chosen respectively by the President, the Queen of England, the King of Italy, the President of the Swiss Confederation and the Emperor of Brazil—and holding sessions at Geneva. The apology was substantially an admission of liability; and made it certain that the arbitrators would find against Great Britain.

See Belligerency; Due Diligence; Great Britain, Diplomatic Relations with; Maritime War; Neutrality, Principles of.

References: C. F. Adams, *C. F. Adams* (1900), ch. xix, *Lee at Appomattox and other Papers* (1903), ch. ii; G. Bemis, *Am. Neutrality* (1866); M. Bernard, *Neutrality of Great Britain* (1870); J. G. Blaine, *Twenty Years of Congress* (1886), ch. xx; J. M. Callahan, *Dipl. Hist. of the Southern Confederacy* (1901); C. Cushing, *Treaty of Washington* (1873); J. C. B. Davis, *Mr. Fish and the Alabama Claims* (1893); W. A. Dunning, *Reconstruction* (1907), 159–171; J. B. Moore, *Int. Arbitration* (1898), I, 495–554; "Geneva Arbitration," in *House Exec. Docs.*, 42 Cong., 3 Sess. (1873), No. I, Pt. I, Vols. I–IV; C. C. Beman, Jr., *National and Private Alabama Claims* (1871); J. D. Bulloch, *Secret Service of the Confederate States* (1883); for British view, Justin McCarthy, *Hist. of Our Own Times* (1880), III, ch. xliv; bibliography in A. B. Hart, *Manual* (1908), 190.

J. M. Callahan.

ALASKA

Discovery and Settlement.—Peter the Great, Russia's most remarkable sovereign declared: "It is not land we want, but water." That is not only the key to the subsequent history of Russia, but it was also the cause of the discovery of Alaska. One of the Europeans employed by the great Czar was Vitus Bering, the Dane, who was ordered to ascertain whether America and Asia were united by land. That order resulted in his discovery of Bering Strait (1728) and later, in what is known as the Great Expedition, he discovered and named Mount Saint Elias (1741). That is accepted as the discovery of Russian America or Alaska. The first settlement or trading post was established at Kodiak. An effort to plant a penal colony on Yakutat Bay failed through the hostility of Indians. In 1799 Sitka was established and soon became the capital of Russian life in America. In 1821 Czar Alexander issued a decree claiming his American boundaries extended southward to the Umpqua River. That would include British Columbia, Washington and Oregon. That was one of the immediate causes of the Monroe Doctrine (*see*). The protests by the United States and Great Britain resulted in the treaties of 1824 and 1825 by which Russia limited her southward claims at 54° 40′. Trading posts and mission stations were extended to various coast points but the features of a fur trading monopoly continued down to the purchase of Alaska (*see* Alaska, Annexation of) by the United States (1867).

Early Neglect by the United States.—After completing his work as Secretary of State, William H. Seward visited Alaska (1869) for the purchase of which he was largely responsible, and in a farewell address to the people of Sitka he said: "I know that you want two things just now—military protection and a territorial civil government." Two months later (October 18, 1869), while celebrating the second anniversary of the flag changing ceremonies, the people of Sitka in public meeting adopted a set of earnest resolutions beseeching Congress to grant their rights as American citizens in the form of local self government. For more than forty years that and similar pleas have been in vain. Congress took little notice of Alaska aside from extending over it the laws of the United States pertaining to customs, navigation and commerce, and the permission granted the Secretary of the Treasury to lease the Pribilof Islands for seal killing purposes, until May 17, 1884, when there was approved the act "providing a civil government for Alaska." This law named Sitka as the temporary seat of government, and provided for a governor, a district judge, a clerk, a district attorney, a marshal, and four commissioners who could also act as justices of the peace. The laws of the state of Oregon were declared to be the law of the district.

All the officers were to be appointed by the President.

Territory or District.—The passage by Congress of an act creating a legislative assembly for the Territory of Alaska has settled the question—in process of adjustment since the purchase—whether Alaska is a territory or a district. In his speech at Sitka, Seward referred to it several times as a territory. Congress in most of the first laws called it the Territory of Alaska but in extending the customs laws Congress began the use of the name of District of Alaska. In granting the shadow of civil government (1884) Congress declared that the territory derived from Russia and known as Alaska "shall constitute a civil and judicial district," and this designation was repeated in the extensive Alaska code adopted by Congress (June 6, 1900). The United States Supreme Court, in Rassmussen *vs.* the United States (197 *U. S.* 516), decided (April 10, 1905) that Alaska was incorporated, though unorganized, as a part of the United States or, in other words, was a territory. On this ground, it is believed, President Roosevelt appointed Daniel Pullen the first cadet from Alaska Territory to the Military Academy at West Point (1906). Subsequently Congress declared (May 7, 1906) "That the people of the Territory of Alaska shall be represented by a Delegate in the House of Representatives of the United States" but in the same law it is further declared that the delegate "shall be an inhabitant and qualified voter of the district of Alaska." In still later laws Congress refers to Alaska as a district. The importance of this point to Alaskans has been in the fact that a district may be administered without a legislature while there would be little logic and no justice in withholding from the people of a territory some form of local self government, that fundamental right of American citizenship.

The Alaska Codes.—In the summer of 1897 the world was astonished by the announcement of wonderful gold discoveries in Alaska. A stampede of gold seekers resulted and Congress was awakened to a more enlightened interest in the long neglected "District." There was approved (May 14, 1898) an act entitled "An Act extending the homestead laws and providing for right of way for railroads in the District of Alaska and for other purposes." On March 3, 1899, and June 6, 1900, there were approved extensive acts comprising the codes of Alaska. These provided methods of procedure in civil and criminal cases at law, civil government and a system of license fees. The seat of government was changed from Sitka to Juneau; the powers of the governor and other officers were increased and provision was made for schools and roads. The incorporation of towns was provided for and the councils in such towns gave some measure of self government.

Present Government.—In August, 1912, Congress passed an act creating a legislative assembly for the Territory of Alaska and fixing the city of Juneau as the seat of the territorial government. The assembly thus created consists of a senate and house of representatives. The senate is composed of two members from each of the four judicial districts of Alaska, or eight members in all, who must have at the time of election the qualifications of an elector in Alaska and must have been an inhabitant and a resident of the district from which chosen for at least two years prior to the date of election. The term of office of senators is four years. The house of representatives is composed of four members from each of the judicial districts, or 16 members in all, with the same qualifications as prescribed for members of the senate. The term of office is two years.

The first election under this act was held on Nov. 5, 1912, and the first session of the legislative assembly convened on the first Monday in March, 1913. The legislature may remain in session not longer than 60 days in any two years, unless convened in extraordinary session for a period not exceeding 15 days by the governor when so requested by the President of the United States, or when required by public danger or necessity. The powers of the legislature are strictly defined. The power of veto is vested in the governor, and, in addition, all laws passed must be submitted to Congress and, if disapproved, become null and void. The legislative expenses are to be met from funds appropriated annually by Congress.

Industrial Conditions.—Furs constituted the first wealth drawn from Alaska, gold followed and there are evidences of much copper and other minerals. Of late years the fisheries have rivaled gold in their aggregate value. The need of railroads was recognized as soon as the gold rush began. The White Pass and Yukon Railroad was the first one constructed. Since then the Copper River and Northwestern Railroad has been built from Cordova to the copper fields, about 200 miles, at a cost of $20,000,000. The Alaska Central Railroad starts from Seward and is constructed 70 miles toward the Matanuska coal fields. Other railroads are projected. Mr. Walter Fisher, Secretary of the Interior under President Taft, declared (1911): "What Alaska needs more than all else is a trunk line railroad from the ocean to the great interior valleys of the Yukon and the Tanana, opening up the country so that its future development may really be possible," and he recommends that the government undertake the building of such a line.

In 1912, the Sixty-Second Congress, at the second session, authorized examination and report by a board of experts on feasible railroad routes from tide-water to the interior of Alaska. For the present, most of the trans-

portation and communication is dependent upon wagon roads and trails constructed by the Alaskan Road Commission, which, since its organization to July 31, 1912, has constructed 829 miles of wagon road, 593 miles of winter-sled road, and 1,527 miles of trails, at an approximate cost of $2,215,000. At first the coal-land laws of the United States were made to apply, these were then restricted as to manner of entry and then (April 28, 1904) the law was amended so that an entryman could get title to 40, 80, or 160 acres by having his claim surveyed by a United States surveyor, by making publication by placard and in the newspaper nearest his claim for sixty days, and by paying the government ten dollars an acre. It was later claimed that the coal lands were of immense value and that claimants had not complied with the law. By order of President Roosevelt (Nov. 12, 1906) all coal lands in Alaska were withdrawn from entry and coal entries in the "entire Territory" were suspended. Lawsuits and investigations followed. The Secretary of the Interior recommended (1911) that the Government retain the actual title and lease the coal lands to those who will develop them. The Secretary of the Navy joined him in recommending that a sufficient portion of high grade Alaska coal be reserved for the use of the Navy, to be mined for that purpose under the supervision of the Bureau of Mines.

Education.—In 1905, Congress enacted that the governor of Alaska should be *ex officio* superintendent of public instruction. The Bureau of Education, Alaska Division, conducts schools and reindeer stations. These efforts to educate the Indians are supplemented by numerous mission schools. Since 1898 the need of schools for white children has developed a number of schools whose support from the Government is supplemented by locally raised funds. An organized system of schools for the territory is one of the hopes of the future.

Population.—The year after acquisition Major General H. W. Halleck reported the population of Alaska to be 30,000; the census of 1890 gave 32,052, and of 1910, 64,356.

See ALASKA, ANNEXATION OF; ANNEXATIONS TO THE UNITED STATES.

References: *Alaska Times*, Sitka, Oct. 23, 1869; T. H. Carter, *Annotated Alaska Codes* (1900); Door and Hadley, *Brief for Defendant* in U. S. *vs.* Charles F. Munday and Archie W. Shiels in the U. S. Supreme Court, Oct., 1911; W. L. Fisher, Address on *Alaskan Problems* (Pamphlet from Government Printing Office, 1911, 11–14); P. Lauridsen, *Vitus Bering: the Discoverer of Bering Strait* (1889); F. W. Seward, *Seward at Washington* (1891), III, 432; *U. S. Statutes at Large* (1905), XXXIII, Pt. I, (1907), XXXIV, Pt. I; W. H. Taft, *Presidential Addresses* (1910), 281–301; M. Farrand, "Territory and District" in *Am. Hist. Rev.*, V (1900), 676–681.

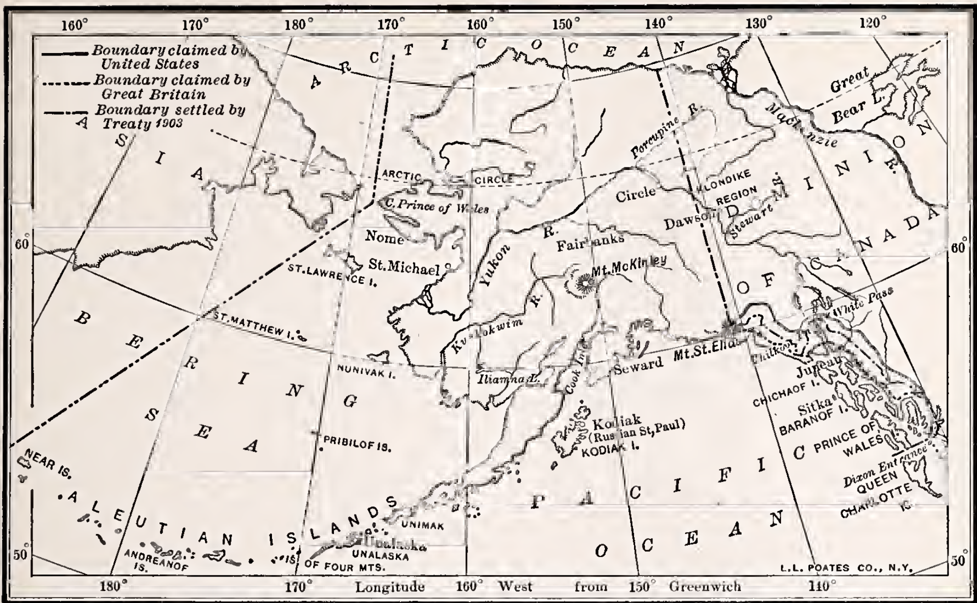
EDMOND S. MEANY.

ALASKA, ANNEXATION OF. It is not definitely known when the cession of Alaska to the United States was first proposed, possibly before the Crimean war. In 1859 the subject was discussed with the Russian minister at Washington and $5,000,000 was offered by the United States, but was deemed too little by Russia. In 1866 the attention of the State Department was again called to Alaska, primarily because the Pacific coast desired to obtain fishing and fur-trading privileges there. The legislature of the territory of Washington addressed a memorial to the President asking for concessions for American fishing-ships in Alaskan ports. There was some fear, too, that England might secure the country; the Hudson Bay Company had extensive privileges along the southern coast by a lease which expired in 1868, and which, if renewed, might go far to give England eventual ownership of the territory, which, though its real value was not then realized, she greatly desired to possess.

The Russian Government wished to sell Alaska, for they believed it was not worth the cost of administration and would be at the mercy of England's superior fleet in case of war with that country. It was natural, therefore, that when Secretary Seward asked for commercial privileges, Russia, through its minister, Baron Stoeckl, should offer to sell the whole province. Seward eagerly accepted the proposal, for, though in those days he had few supporters, he was a firm believer at all times in the territorial expansion of the United States.

The price at first agreed upon, $7,000,000, was increased by $200,000 in order to buy up all reservations and grants held by Russian trading companies. The treaty was signed Mar. 30, 1867; was ratified by the Senate (37 to 2) April 9; and proclaimed by the President June 20. It ceded "all the territory and dominion" possessed by the Emperor of Russia "on the continent of America and the adjacent islands," with the boundaries determined by the treaties of 1824 and 1825 with the United States and England respectively. The transfer of the territory was made at Sitka, Oct. 18, 1867.

Though Alaska was thus formally annexed the voting of the purchase money depended on the House of Representatives which strongly objected to this pledging of public funds without its consent and perceived no national desire for, or interest in, Alaska. The country was popularly supposed to be a land of polar bears and ice-bergs. Its value in gold and coal was unknown. The House was finally induced to pass the necessary appropriation bill, July 27, 1868, primarily on account of



Territory of Alaska, Showing the Boundary in Dispute

its desire to return Russia a supposed kindness for her friendship shown to the Union during the Civil War.

See Alaska; Alaska Boundary Controversy; Annexation, Diplomatic Principles of; Annexations to the U. S.; Boundaries of the United States; Conservation; Seal Fisheries.

References: F. Bancroft, *Life of Seward* (1900), II, ch. xlii; H. H. Bancroft, *Hist. of the Pacific States* (1886), XXVIII, ch. xxviii; J. B. Moore, *Digest of Int. Law* (1906), I, § 107; J. G. Blaine, *Twenty Years of Cong.* (1886), II, 333–340. George H. Blakeslee.

ALASKA BOUNDARY CONTROVERSY. The discovery of gold in the Klondyke in 1896 precipitated an Anglo-American dispute regarding the Alaska-Canadian boundary line as defined by the Anglo-Russian treaty of 1825 by which Russia shut out the British from an unbroken strip of coast lands and waters of Alaska from Mt. St. Elias to Portland Canal. The Canadian Government in 1898 laid claim to the ports of Dyea and Skagway on Lynn Canal, through a novel construction of the treaty, *viz.*, that the line defined as running ten leagues parallel with the sinuosities of the coast or heads of tide-water inlets should run parallel to the coast itself. These views were persistently presented in 1898 to the joint high commission appointed to consider and adjust disputed American-Canadian questions; but refusal of the American members to accept arbitration upon the basis of the then recent Venezuelan boundary dispute, finally terminated negotiations and prevented settlement of all other questions. The revisal of the Clayton-Bulwer treaty was then under consideration and for a time the British government seemed disposed to trade it off against a port or ports in Alaska.

In October, 1899, the United States made a temporary concession, agreeing upon a *modus vivendi* which fixed a provisional line about the head of Lynn Canal, which gave Canada temporary possession of places claimed within American jurisdiction. This was marked by joint survey (July, 1900).

Negotiations having been transferred to London, the American proposition for reference to a joint commission of jurists (an equal number from each country in conformity with the unratified Olney-Pauncefote arbitration treaty of 1896) was renewed. Finally, to determine whether the coast line ran through inlets or around them, Secretary Hay on January 24, 1903, signed a treaty convention providing for a mixed boundary commission (three Americans and three Britons) luckily obtaining assent both of Canada and the Senate of the United States.

This tribunal met at London on September 3, 1903. Lord Alverstone, chief-justice of England, was chosen to preside. The decision rendered on October 20, 1903, by vote of the Americans and Lord Alverstone practically sustained the American claim; but, adopting the British contention regarding the Portland Canal, it awarded to Canada the small Wales and Pearse islands at its head. In reality the arbitration was like that of 1872, a means of honorable withdrawal from a position which the British government thought untenable.

The two Canadian commissioners, protesting against all American claims, refused to

sign the report and improperly arraigned their judicial colleagues in the press. The Canadian Government complained that the American commissioners, Secretary Root and Senators Lodge and Turner, were not "impartial jurists of repute" as contemplated by the terms of the treaty.

See ARBITRATIONS, AMERICAN; FISHERIES, INTERNATIONAL; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; RUSSIA, DIPLOMATIC RELATIONS WITH.

References: T. W. Balch, *The Alaska-Canadian Frontier* (1902); J. W. Foster, *Dip. Memoirs* (1909), II, 191–210; Thos. Hodgkins, *British and American Diplomacy* (1900); J. H. Latané, *America as World Power* (1907), ch. xi; J. B. Moore, *Digest of Int. Law* (1906), 466–475; Alaska Boundary Tribunal, *Proceedings* (1903); U. S. State Dept., *Fur Seal Arbitration Am.* (1895), IV, 365–449; *Nat. Geog. Mag.*, Nov., 1899, 425–456; *No. Am. Rev.* CLIX (1894). J. M. CALLAHAN.

ALBANY PLAN OF UNION. Before the outbreak of the French and Indian War England appreciated the need of colonial organization. Relations with the Indians required attention and it was desirable that the colonies should coöperate against the French. England, in fact, needed to organize her empire for defense. In June, 1754, representatives from New York, Pennsylvania, Maryland, and the New England colonies met at Albany. Much time was taken in discussing Indian affairs and in holding councils with the representatives of the Six Nations. The convention is chiefly memorable because a general plan of union was drawn up, mainly, it appears, the work of Franklin. It is of importance: (1) as a scheme for imperial order and plan for imperial defense; (2) as a suggestion of the general powers which should be given to a general colonial government. It is interesting as a hint of the federal system later established by the Constitution (1787).

This plan proposed an act of Parliament establishing "one General Government" in America, each colony to retain its constitution save as directed by the act. A president general was to be appointed and paid by the Crown; a grand council was to be established, made up of delegations chosen by the representative assemblies, the number in each delegation to be in proportion to the payments into the federal treasury, provided, however, that no colony have more than seven nor less than two representatives. The assent of the president general was required to all acts of the council. The president general and the council were to control Indian affairs, regulate Indian trade, make new settlements on lands purchased in the back country not "within the bounds of particular colonies," make laws for regulating such new settlements "till the Crown shall think fit to form them into particular Governments," raise an army, equip a navy, levy "duties, imposts, or taxes," appoint "a General Treasurer and a particular Treasurer in each Government when necessary," and order the sums in the treasury of each government into the general treasury, or draw on them for special payments. Laws were to be transmitted to the king and council for approbation and if not disapproved within three years after presentation, "to remain in force." The plan was not adopted either by the colonies or by the English Government.

References: W. MacDonald, *Select Charters* (1904), 253–257; R. Frothingham, *Rise of the Republic* (8th ed., 1902), ch. iv.

A. C. McL.

ALBANY REGENCY. A coterie of able and skilful politicians of New York State who controlled the machinery of the Democratic party of the state from about 1820 to 1854. It came into power with the development of the nominating system and maintained strict party discipline by means of a drastic system of rewards and punishments. Chief among the leaders were Van Buren (*see*), Marcy (*see*), Wright and Dix. O. C. H.

ALBERTA. One of the provinces of western Canada, created September 1, 1905, by act of the federal Parliament of Canada (4–5 Edward VII, ch. 42). It occupies the territory lying between the provinces of Saskatchewan and British Columbia, just northward of the American boundary, and its climate is particularly well adapted for cattle raising. The province comprises about 253,000 square miles with a population in 1911 of 374,633. Like its sister province of Saskatchewan, the development of Alberta has taken place almost wholly within the past twenty years.

Alberta sends four senators to the Dominion Senate and seven members to the Dominion House of Commons. But this representation will undoubtedly be increased by the forthcoming redistribution on the basis of the decennial census of 1911. Its provincial government consists of a lieutenant-governor appointed for a four-year term by the governor-general of the Dominion, a ministry or cabinet of four members chosen by the lieutenant-governor but responsible to the elected representatives of the people, and a single legislative assembly of forty-one members elected from thirty-nine districts. The cities of Edmonton and Calgary elect two members each. Alberta has made some interesting experiments in state ownership of public and semi-public utilities, as well as in the policy of taxing unearned increment. Edmonton, the most northerly city of Canada, is the provincial capital and also the seat of the new provincial university.

See CANADA, DOMINION OF; CANADIAN PROVINCES.

References: G. M. Adam, *The Canadian North West* (1885); A. Begg, *Hist. of the North West* (1894–5); *Canadian Annual Review of Public Affairs.* W. B. M.

ALDERMAN. This term had its origin in the Anglo-Saxon word ealdorman or lord and came to be applied to city magistrates. The term was used in the colonial city charters to designate officials who, in addition to being equal members of the council, also exercised certain. judicial powers. The term continued to be used, however, after these judicial powers were taken away, because the title "alderman" was considered more dignified, and because when the bicameral council was adopted it was natural to call the members of the upper body the aldermen and those of the lower body councilmen. See COUNCIL, MUNICIPAL; LEGISLATION AND LEGISLATIVE PROBLEMS IN CITIES. Reference: J. A. Fairlie, *Essays in Municipal Administration* (1908), 70–71. H. E. F.

ALDRICH, NELSON WILMARTH. Nelson W. Aldrich (1841–) was born at Foster, R. I., November 6, 1841. He entered politics as a Republican, in 1871, as president of the common council of Providence; and in 1875–76 was a member of the general assembly, in the latter year serving also as speaker of the house of representatives. In 1878 he was elected to Congress, retaining his membership in the House until 1881, when he was chosen United States Senator. He served continuously in the Senate until March, 1911, when he retired, having declined to be a candidate again. Though taking little open part in Rhode Island affairs, he was for years the virtual dictator of politics in that state; his position as chairman of the Senate committee on finance, and his mastery of the details of protective tariff making, made him the leader of his party in the Senate and the chief influence in monetary and tariff legislation in the country. He was chairman of the National Monetary Commission, created in 1908, and continued to hold the office after his retirement from the Senate. The schedules of the Payne-Aldrich tariff of 1909 were framed under his supervision. See BANK, CENTRAL; RHODE ISLAND; SENATE OF THE U. S.; TARIFF LEGISLATION, FRAMING OF. References: D. R. Dewey, *National Problems* (1907); J. H. Latané, *Am. as a World Power* (1907). W. MACD.

ALDRICH PLAN. See BANK, CENTRAL.

ALIEN. Definition.—In international law, the term alien is used to denote a citizen or subject of a foreign country who may be temporarily or permanently domiciled in a country other than that of his origin or nationality. If the alien has become naturalized in a foreign country, he loses, so far as that country is concerned, the character of a foreigner; he becomes a citizen or subject, although a distinction may still exist according to domestic law between the status of native and naturalized persons; moreover, the country of origin, unless it has consented to the act of naturalization, may still claim him as its subject or citizen and enforce that claim if he returns to the country of his origin.

Exclusion.—Any nation may refuse to admit aliens, since an independent state is entitle to decide for itself the constituent elements of its population, and certain classes of foreigners may be, for various reasons, undesirable to it. Thus, the United States refuses to admit certain classes of Chinese, and denies Mongolians generally the right to become citizens of the United States (Act July 5, 1884). Although it cannot be said that a foreigner has a right to enter any particular country, nevertheless the practice of admitting aliens is so general that the exclusion of foreigners of particular nationalities or of a particular religious faith would be regarded as an unfriendly act; although no serious objection would be interposed to the exclusion of certain classes among them, such as paupers, criminals, insane persons, or persons suffering from loathsome and incurable diseases.

Regulation.—As a nation has the right to exclude foreigners, it may determine both the conditions of their entrance and of their residence, and it is the right of every nation to determine the extent to which aliens shall enjoy political rights or privileges. Discrimination in the treatment of alien residents would be regarded as an unfriendly act, and foreign nations might well object to inequality of treatment which involved indignity to their citizens and a reflection upon their respective governments (*see* IMMIGRATION).

The alien, whether he be permanently or temporarily domiciled, or be a visitor, owes obedience to the local laws, and compliance with them may be enforced. If compliance would involve a breach of the duty he owes to his government the remedy is to leave the country. The allegiance which he owes to the country of residence is, however, temporary. Being gained by residence, it is lost by a change of residence. The permanent allegiance, in this case, is to the home government, which, however, cannot exercise any act of sovereignty within a foreign jurisdiction. A failure to comply with the laws of the home country can, however, be punished upon the return of the alien to his home country. The most that a foreign government can ask is that its subjects or citizens be given the legal rights and privileges of natives. It cannot insist that they be given a preferred position to the citizens of the country. They are, however, under its protection, since they still owe it allegiance; and a denial of the rights and privileges extended to other aliens, or improper treatment of their persons or property, justifies the foreign gov-

ernment in protesting, through diplomatic channels, against such treatment of its nationals.

Extraterritoriality.—In certain countries, such as China, Siam, Persia, Morocco and Egypt, aliens are not assimilated to natives before the law; and they not only stand under the protection, but are subject to the jurisdiction, of their respective governments. The jurisdiction exercised over them is, as it were, carved out of the ordinary national jurisdiction, and nations claiming and exercising this right in foreign countries are said to possess extraterritorial jurisdiction. This is an abnormal situation resulting from custom or treaty (*see* CAPITULATIONS). In such countries, the diplomatic or consular officers are invested with special jurisdiction and execute the civil and criminal laws of their country in cases involving their own nationals. This extraterritorial jurisdiction arises from the lack of confidence on the part of the country exercising it in the administration of justice by the foreign state. It is a temporary expedient and is abolished when the country in question satisfies the foreign country of its willingness and ability to treat aliens in their person and property as they are treated in countries where extraterritoriality does not exist. Thus, by the treaty of November 22, 1894, between the United States and Japan, the extraterritorial jurisdiction possessed by the former was renounced on and after July 17, 1899.

See ALIENS, CONSTITUTIONAL STATUS OF; ALLEGIANCE; CITIZENSHIP IN THE U. S.; EXPATRIATION; EXTRADITION, INTERNATIONAL; EXTRATERRITORIALITY; INTERNATIONAL LAW, INFLUENCE OF U. S. ON; INTERNATIONAL LAW, PRINCIPLES OF; MILITARY SERVICE, COMPULSORY; NATIONALITY; NATURALIZATION; "ONCE AN ENGLISHMAN ALWAYS AN ENGLISHMAN"; PROTECTION OF CITIZENS ABROAD; WAR, INTERNATIONAL RELATIONS.

References: J. B. Moore, *Digest of Int. Law* (1906), IV, § 534–578, *Am. Diplomacy* (1905), ch. vii; Am. Soc. of Int. Law, *Proceedings* (1911); L. Oppenheim, *Int. Law* (1912), 390–403; bibliography in A. B. Hart, *Manual* (1908), § 155, 201. JAMES BROWN SCOTT.

ALIEN AND SEDITION ACTS. These acts were passed by Congress in 1798. They were the result of feeling against France caused by the *X. Y. Z.* disclosures (*see*) and also of a feeling of irritation caused by the abusive and virulent criticism of Government. The Federalists, who had not been guiltless of bestowing abuse in their turn upon their party opponents, thought by a series of repressive measures to check what they deemed unwarranted and dangerous criticism of government. There was doubtless, also, an idea in the minds of the Federal leaders that governmental authority was threatened and official respectability jeopardized by faultfinding, and that aliens, particularly Frenchmen, might be a source of serious danger to the country.

The acts, which were intended to strengthen the government and put a stop to abusive criticism, included four measures. The first, the Naturalization Act, provided that, in order to become a citizen, a foreigner must have resided in the United States at least fourteen years and have declared his intention to become a citizen at least five years before his admission to citizenship. The law of which this was an amendment had prescribed five years of residence and a declaration three years before admission. Alien enemies were not admissible at all. The act was repealed in 1802. The second act, passed June 25, 1798, was by its terms to continue two years, and was not reënacted. It gave authority to the President to order out of the country all such aliens as he should consider dangerous to the peace and safety of the country or such as he should suspect of being concerned in treasonable or secret machinations against the government. The third act, called the Alien Enemies Act, provided for the issuance of a proclamation by the President, in event of war with a foreign nation or in case an invasion was made or threatened, and provided that natives or citizens of the hostile nation should be liable to apprehension and removal as alien enemies. The fourth act, the Sedition Act, was directed against unlawful combination or conspiracy with intent to oppose any measure of the government or to impede the operation of law. It provided for the punishment of persons attempting to arouse any such insurrection or procure such combination. It also declared that if any person should write, utter or publish or should aid in the writing, uttering, or publication "of any false, scandalous and malicious writing" against the Government, either house of Congress or the President with the intent of defaming them or bringing them into "contempt or disrepute" or to excite against them the hatred of the people or to stir up sedition, or to excite unlawful combination for opposing any law or for opposing acts done by the President in pursuance of the law or to aid any hostile design against the country, such person on conviction before any court of the United States having jurisdiction thereof should be punished by the imposition of a fine not exceeding two thousand dollars and by imprisonment for a period not exceeding two years.

Of these acts, the Sedition Act was the most dangerous in tendency. Probably the other acts were entirely constitutional, if we may judge from the recent decisions upholding Chinese exclusion acts. The Sedition Act, however, certainly went to the verge of constitutionality and endangered free institutions because it threatened free discussion. Men were tried and punished under the act; but its enforcement appears to have stimulated the Democratic

reaction and injured the party that passed these restrictive measures.

See DEMOCRATIC-REPUBLICAN PARTY; FEDERALIST PARTY; VIRGINIA AND KENTUCKY RESOLUTIONS.

References: Texts in U. S. *Statutes at Large*, I, 566–597 and in W. MacDonald, *Select Documents* (1898), 137–148; J. S. Bassett, *The Federalist System* (1906), 254–264; J. B. McMaster, *History of the People of the U. S.* (1885), II. 393–400, 466–471.

ANDREW C. MCLAUGHLIN.

ALIEN LABOR. See LABOR, ALIEN.

ALIENS, CONSTITUTIONAL STATUS OF. By international law, as well as by municipal law, a state is conceded to have legal jurisdiction over all persons within its territorial limits. Over those persons, however, termed aliens, who do not owe direct allegiance to itself, but are the citizens of another power, the state's authority is not in some respects so extensive, and in others not so exclusive as it is with respect to its own subjects; and, reciprocally, its obligation to them are not so broad. A person has no absolute right to enter, or, having entered, to remain within the territory of a state of which he is not a citizen. Generally speaking, however, in modern times, international comity (*see* COMITY, INTERNATIONAL) causes states to open their doors to foreigners except where special reasons exist for closing them, and, even here, just cause for grievance arises upon the part of the country whose subjects are excluded or expelled, if the action is arbitrary and discriminatory. Aside from special treaty provisions aliens are entitled to the protection of the local laws with respect to both their persons and property. Their rights to acquire and hold property may, however, be limited or denied. Thus they may be refused the right to take title to land, or become shareholders or incorporators in certain kinds of enterprises. The extent to which they may be given political rights, as, for example, to hold public office or to exercise the suffrage, lies wholly within the discretionary grant of the local sovereignty; though here, also, if the citizens of a particular state be discriminated against, just cause of grievance may be given. The granting to aliens of a right to become, by naturalization, citizens of the state wherein they reside, is also wholly discretionary with that state. At the present time persons of the Mongolian races are denied that right of naturalization which is granted to members of the white races and to aliens of African nativity. Inasmuch as resident aliens enjoy the protection of the local law, they may be required, when necessary for the maintenance of domestic order, to serve in the militia and political forces, or in a *posse comitatus* (*see*). They may not, however, be compelled to serve in the armed forces of the local state in cases of public war. Aliens may be domiciled or not domiciled. The first status attaches where one takes up his residence within the country with the purpose of remaining therein for an indefinite period of time. See ALIEN; ALLEGIANCE; CITIZENSHIP IN THE UNITED STATES; NATURALIZATION. References: A. P. Morse, *Citizenship by Birth and by Naturalization* (1881); J. N. Garner, *Intro. to Pol. Sci.* (1910) § 65–69.

W. W. WILLOUGHBY.

ALLEGIANCE. "Allegiance" is a term of constitutional law signifying the tie which binds the subject or citizen to the sovereign as representative of the state, or to the state itself. It may be said to be of three kinds: (1) natural allegiance, which the subject or citizen owes by reason of birth within a country; (2) acquired allegiance, resulting from naturalization in a foreign country; (3) local or temporary allegiance, due from a foreign subject or citizen to the government of a country in which he is for the time residing.

This bond exists between the government and the subject, and accordingly the dissolution of it would seem to require the consent of both parties, except where the allegiance is local or temporary because of mere residence.

The early Anglo-American doctrine regarded allegiance as inalienable without the consent of the state; and though contested in the controversy over neutral trade (*see*) it is stated by the Supreme Court of the United States in Shanks *vs.* Dupont (3 *Pet.* 242) in 1830 that "the general doctrine is that no persons can, by any act of their own, without the consent of the Government, put off their allegiance and become aliens." In countries with a compact body of subjects, unaffected by immigration, the doctrine of indefeasible allegiance might well apply without embarrassment or inconvenience. In the United States, however, the stream of immigrants in the third and fourth decades of the nineteenth century resulted in a conflict between the jurisdiction assumed by the United States and that still asserted by the native country of the immigrant.

In 1868 Congress declared that "The right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty and the pursuit of happiness." Treaties were entered into with foreign countries from which foreign-born citizens principally come, providing for the renunciation of natural allegiance and the acquisition of citizenship of the United States.

In 1870, Great Britain, by a naturalization act, renounced the doctrine of inalienable allegiance. Other European states have been slow to follow. Most of them concede the right of emigration and expatriation, subject to certain conditions which more or less negative the assertion of the United States that the right is "natural and inherent." France, Ger-

many, and Italy impose the obligation of fulfilling military service. Austria, Spain, and Sweden require the express consent of the government, but acknowledge the loss of nationality by naturalization abroad. Russia and Turkey deny absolutely the possibility of severing the bond.

See ALIEN; ALIENS, CONSTITUTIONAL STATUS OF; EXPATRIATION; IMPRESSMENT; KOZTA CASE; NATURALIZATION.

References: L. Oppenheim, *Int. Law* (1912), 369–377; W. E. Hall, *Int. Law* (6th ed., 1909), 239–250; bibliography in A. B. Hart, *Manual* (1908), § 177. JAMES BROWN SCOTT.

ALLIANCES BETWEEN STATES. See INTERSTATE LAW AND RELATIONS; STATES, COMPACTS BETWEEN.

ALLIANCES, ENTANGLING. See ENTANGLING ALLIANCES.

ALLISON, WILLIAM BOYD. William B. Allison (1829–1908) attained some prominence as an organizer of the Republican party in his native state, Ohio, prior to his removal, in 1857, to Iowa. In 1862 he was elected to the Thirty-Eighth Congress, and during the next year he entered upon what proved to be one of the most prolonged of legislative careers in the history of the nation. Four successive terms in the lower House were followed, after an interval of two years, by election to the Senate; and to his seat in that body Allison was reëlected five times—in 1878, 1884, 1890, 1896, and 1902. During most of his service in the House he was a member of the ways and means committee. In 1881–1893, and again from 1895, he was chairman of the Senate committee on appropriations, and from 1877 he was a member of the Senate committee on finance. He early gained recognition as an authority upon subjects pertaining to finance, and his name is associated principally with the Bland-Allison Silver Purchase Act of 1878 and other measures of an economic nature. He was a protectionist, but his influence was employed constantly in behalf of tariff moderation. In 1892 Allison served as chairman of the American delegation to the International Monetary Conference at Brussels. See BLAND-ALLISON SILVER ACT; IOWA; REPUBLICAN PARTY; SILVER COINAGE CONTROVERSY. References: U. S. Senate and House, *Memorial Addresses* (1909); D. R. Dewey, *National Problems* (1907), 136, 137. F. A. O.

ALLOTMENT OF LANDS TO INDIANS. A method of dissolving the tribal relations, bringing to an end the reservation system, and admitting the Indians to United States citizenship. The Dawes Act of Feb. 8, 1887, crystallized the existing policy. This act, as amended, applies to almost all Indians on reservations. Allotments of land in severalty are made which are held in trust until a patent in fee simple issues. The size of the allotments and the length of the trust period vary. In Oklahoma citizenship is conferred with the allotment, elsewhere only on receipt of the patent in fee. To June 30, 1910, 190,401 allotments were made in twenty-six states and territories, more than half being to members of the Five Civilized Tribes in Oklahoma. See INDIAN RESERVATIONS; PUBLIC LANDS. References: U. S. Commission of Indian Affairs, *Annual Reports;* Indian Rights Association, *Annual Reports* (since (1884); Lake Mohonk Conference of Friends of the Indian, *Reports* (since 1883). P. J. T.

ALMSHOUSE. See CHARITIES, PUBLIC AGENCIES FOR.

ALTERNATES. The principle of American political law is that a person chosen to any office must exercise its authority himself (*see* DEPUTIES). The system of written proxies by which the stockholder of a corporation may designate someone else to cast his vote is frequent in political committees, but cannot be applied to legislators, nor to executive officials. A lieutenant governor (*see*) in a few states may act as governor at any time when the governor is out of the state; and acting mayors may be designated out of certain officials by a mayor who expects to be absent; or some officer may, by law, temporarily take his place. As for the judiciary, in both state and national courts there is flexibility in assigning judges, so that a man may hold court outside his own district, or in place of a judge who has some personal interest in a case that would otherwise come before him.

In the membership of political conventions (*see* CONVENTION, POLITICAL) there have been instances ever since 1840 when alongside the regular delegate has been provided an alternate. His duty was at first, apparently, to attend when his principal did not get to the convention at all; later he took the place of his principal temporarily, so as to keep the delegation full if possible; at all times he shares in the excitement of the convention as a privileged spectator. The earliest recognition of alternates in a Republican convention was in 1860. The first Republican convention in which there was an alternate for every delegate, district and at large, was in 1884.

From the year 1880 onward the rules of the Republican national convention required that for every delegate there should be chosen by the same authority an alternate who should act when the regular member was absent; and by decisions of chairmen of the convention at various times it was held that an alternate at large could take the place of any delegate at large; but a district alternate could take the place only of a regular delegate from

his district. It was the custom of the convention that the alternates should sit in a separate part of the hall; and whenever the regular delegate withdrew from the part of the house appropriated to the delegation, the alternate, whether summoned or not, had a right to take the seat of his principal, and to act in his stead; otherwise he was not entitled to sit with the delegation at all, or to participate in any business.

In the convention of 1912, when two Massachusetts delegates at large on a roll call personally answered "present and not voting" Chairman Root called the alternates, who voted for the candidate opposed by their principals. Mr. Root's theory was that a reply on roll call by a member from his seat that he was "present but not voting" was a constructive absence. This ruling is out of accord with all previous rulings at Republican conventions.

See CONVENTION, POLITICAL; DELEGATES TO CONVENTIONS; PERMANENT CHAIRMAN; RULES OF LEGISLATIVE BODIES.

ALBERT BUSHNELL HART.

AMBASSADOR. Ambassadors constitute the first rank of diplomatic agents. At the Congress of Vienna (1815) it was agreed that they alone should have the representative character, *i. e.*, should represent the person of the sovereign or chief executive of their state. Only states enjoying "royal honors," *i. e.*, empires, kingdoms, grand duchies, great republics and the Holy See, have the right to send ambassadors. It is the traditional privilege of ambassadors to negotiate directly with the head of the foreign state, but this privilege has come to be of little practical value. See DIPLOMATIC AGENT; DIPLOMACY AND DIPLOMATIC USAGE; DIPLOMATIC SERVICE OF THE U. S.; LEGATIONS. **References:** J. W. Foster, *Practice of Diplomacy* (1906); J. B. Moore, *Digest of Int. Law* (1906), IV, § 623–695; W. E. Hall, *Int. Law* (1909), 290-316; C. de Martens, *Le Guide Diplomatique* (5th ed., 1866); C. van Bynkershoek, *De Foro Legatorum* (1721), trans. into French by J. Barbeyrac (1723).

J. B. S.

AMENDMENT OF STATE CONSTITUTIONS. See CONSTITUTIONS, STATE, AMENDMENT OF.

AMENDMENT OF LEGISLATIVE MEASURES. A large and increasing proportion of the output of all legislative bodies consists of amendments to existing statutes. Amendments take one of three forms; the insertion or addition of certain words; the elimination of certain words or the omission of certain words and the substitution in their places of others. The procedure by which such changes are effected is governed by generally recognized rules applicable to each of the three forms mentioned. Many constitutions provide that no act shall be revised or amended by mere reference to its title; but that the act or section amended shall be set forth at length. The evil sought to be remedied by such a requirement was the practice of enacting legislation in such form that legislators themselves were often deceived as to its content and purpose and the public could not become familiar with it without making the necessary examination and comparison. An act which purported to amend an existing law merely by striking out certain words and phrases and inserting others or by adding certain words, in either case by referring to the act amended without publishing the amended part with its proper context, was well calculated to mislead and introduce confusion into the law itself. The better opinion is that the requirements referred to are complied with in spirit if not according to the letter, if the act or section is set forth as amended without publishing the whole act or section as it stood before, though the courts of a few states have held otherwise and insisted upon the republication of the old law in full. The effect of such insistence, however, only tends to render the statute unnecessarily cumbersome and thus to defeat the purposes of the constitutional requirement. A common practice is either to italicize the words of clauses amended or to state first the specific words to be substituted and then cite the entire section as amended. The constitutions of a number of states also prohibit the amendment or alteration of bills so as to change their original purpose. Some constitutions as well as the rules of a number of legislative bodies, forbid amendments the effect of which is to change a special private or local act into one of general application. A common rule of procedure is one which forbids the offering of amendments to bills upon third reading. The Indiana rules forbid the amendment of a bill by annexing thereto or incorporating therewith any other bill pending before the house. Massachusetts and Rhode Island forbid under cover of amendment motions or propositions on subjects different from that under consideration. This is also a rule of the national House of Representatives. Among the new rules adopted by the national House of Representatives in April, 1911, was one forbidding amendments affecting revenue, which are not germane to the subject matter in the bill. See BILLS, COURSE OF; PARLIAMENTARY LAW; RULES OF LEGISLATIVE BODIES. **References:** T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 215–217; L. S. Cushing, *Law and Practice of Legislative Assemblies* (1907), 516–533; C. L. Jones, *Statute Law Making* (1913), ch. xii; T. E. May, *Parliamentary Practice* (11th ed., 1906), ch. x; P. S. Reinsch, *Am. Legislatures and Legislative Methods* (1903), 137–139.

JAMES W. GARNER.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES. See CONSTITUTION OF THE UNITED STATES, AMENDMENTS TO.

AMERICA. In its broad sense this name applies to the continents of North and South America and to all the islands which are naturally associated with them as parts of the continental mass of the Western Hemisphere. North America extends far within the Arctic Circle. The northern extremities of the continent are found in the islands of Greenland and Grant's Land. South America extends only to latitude 55°, its southern point, Cape Horn, belonging also to an island. South America lies much farther east than North America, its western shores being coincident in longitude with the eastern parts of its northern neighbor. This position of South America has aided in giving it close historical and commercial relations with Europe.

A comparison of the surface of the two continents shows distinct similarities. Both have highlands in the west and these are in the main lofty and are geologically in comparative youth. The eastern highlands in both are older, more subdued, lower in altitude, and of less extent from north to south. Each has central plains throughout the greater part of its latitude range. To these plains belong most of the large river systems. The Mackenzie may be compared with the Orinoco, the Hudson Bay and St. Lawrence waters with the Amazon, and the Mississippi with the La Plata system. South America has no Pacific rivers to compare with the Colorado, Columbia, or Yukon. In general form, both continents are wide at the north and narrower at the south. The coast line of North America is broken, especially in the north, while that of South America is in great part smooth. Her harbors are comparatively few, and she has no such closed seas and large islands as characterize North America.

The northern continent has its wide parts in the temperate and arctic belts and is narrow in the tropical zone. South America is wide in the tropics and narrow in the temperate zone. Hence both the tropical sun and the ocean's heat operate effectively to give South America higher and more even temperatures, except as Arctic cold is found in the heights of the Andes. Not only longitude, but latitude, has influenced the relations of the new world to European countries, and as a result we find that Latin America ends not at the Isthmus of Panama, but along the Rio Grande and the Strait of Florida, while all the land north of these waters may be called English or Anglo-Saxon America. ALBERT PERRY BRIGHAM.

AMERICAN AS A TERM FOR THE UNITED STATES. The word "American" is popularly used, both at home and abroad, to signify the United States, though in domestic statutes the term "United States" is strictly adhered to. Even in diplomatic assemblies it has become customary for the representatives of the United States to rank alphabetically as "America, the United States of." The Department of State issued a circular August 3, 1904, addressed to "American Diplomatic and Consular Officers," instructing them that thereafter the official adjective used on stationery and seals should be "American" instead of "United States." It was, however, found impracticable to alter the seal, as the various states of the Union had enacted statutes respecting authentication of documents which specified the words "Legation of the United States," etc. Accordingly, the department made no change in the lettering on the seals, and the circular was eventually ignored in its entirety. See AMERICAN RACE AND AMERICAN NATIONALITY. J. B. S.

AMERICAN CATO. Sobriquet bestowed upon Samuel Adams (*see*) by newspaper press as early as 1781 for supposed resemblance to the Roman Cato, in his strength of character political virtue, and sturdy support of democratic ideas. O. C. H.

AMERICAN CONVENTION. In August, 1888, a convention composed of 126 delegates, more than half of whom came from New York, met in Washington. Many of the delegates withdrew before nominations were made. The convention nominated James Langdon Curtis for President and James R. Greer for Vice-President. The platform was chiefly taken up with declarations against unrestricted immigration and with evils which, it was asserted, resulted; it declared that the "most dangerous 'free trade' is that in paupers, criminals, communists, and anarchists, in which the balance has always been against the United States." See A. P. A. References: T. H. McKee, *National Conventions and Platforms* (1901), 254–256. A. C. McL.

AMERICAN CONVENTION OF ABOLITIONISTS. From 1794 to 1829 was held, usually at intervals of two years, a meeting of the opponents of slavery, which took upon itself the title The American Convention of Delegates from Abolition Societies, and after 1818 the American Convention for Promoting the Abolition of Slavery. It was chiefly a southern organization, composed of delegates from Maryland, Virginia, North Carolina, and also from Pennsylvania, New Jersey, and New York, all of which were still slave holding. Occasionally members came from New England states and from other southern states. Most of the delegates were members of local societies. The convention not only held meetings but issued appeals to the public; subsidized newspapers; and put a pressure upon its members to influence their legislatures. The American Colonization Society drew away many men who

would otherwise have been active in the society; and the rise of cotton culture, which raised the value of slaves within the border states, brought about a powerful economic reaction against abolition. The main convention never reassembled after 1829; but some of the local societies in Ohio and Kentucky continued and went over into the later abolition movement. See ABOLITION; COLONIZATION OF NEGROES; SLAVERY CONTROVERSY. **References:** M. S. Locke, *Anti-Slavery in America 1619–1808* (1901); M. Tremain, *Slavery in the District of Columbia* (1892); A. D. Adams, *Neglected Period of Am. Anti-Slavery* (1908); E. R. Turner, "First Abolition Society in the U. S." in *Pa. Mag. of Hist. and Biog.* (Jan. 1912). A. B. H.

AMERICAN FABIUS. A sobriquet of George Washington (*see*) bestowed upon him by the press of 1775–1785 because his military tactics in harrassing the British forces, while avoiding a pitched battle, resembled those employed by the Roman, Fabius Cunctator, in his campaigns against Hannibal in the Second Punic War. O. C. H.

AMERICAN GOVERNMENT AND GEOGRAPHY

Geography as a Condition.—Like all other governments, those in America are from the outset affected by the physical conditions under which they have been planted (*see* PHYSICS AND POLITICS). English colonial development was circumscribed by the mountain barrier near the coast, and by the rapid slope eastward which made the streams difficult of navigation. With the exception of the struggle for the possession of the upper tributaries of the Ohio and the weak early settlements in Kentucky and Tennessee, the drama of colonial and revolutionary history was played between the summits of the Appalachian chain and the Atlantic Ocean.

These conditions much affected the governments of the English colonies. They were stretched along fifteen hundred miles of sea coast, with numerous harbors excellent for the time; hence they developed into thirteen units each with its water front; each shoving against its next neighbor for territory; each with a direct connection across the ocean to England. Every one of these colonies was planted in a heavily timbered country with few natural openings and therefore they preserved a frontier character for nearly two centuries from their foundation. Each had a public land policy, which in the colonies where a quit rent was exacted led to violent internal disturbances. The scattered population and the nearness of savage neighbors led to a general militia system which was practically a *levée en masse*, in cases of serious danger.

Effect of Segregation.—The distance from England had also a great influence on the colonial governments, by making it necessary for the home government to lay out systematic plans for colonies in advance, by charters, proprietary grants or royal instructions. This involved giving the royal governors responsibility in one direction and tying their hands in another, a sure preparation for squabbles with the popular assemblies. Within the colonies from the beginning, it was necessary to allow local units of government—towns in New England, counties in the South, and combinations of town and county in the middle colonies—a degree of local authority unknown in England. Physical conditions also aided to delay the building up of cities; and the colonies were hence relieved from many questions of municipal authority familiar in England.

The physical obstacles to travel by land between colonies made it difficult for neighboring colonies to act together, or to form unions except in the small and closely akin New England group (*see* NEW ENGLAND CONFEDERATION); and diminished that freedom of intercourse and mutual knowledge and respect which are needful for a federal state.

Task of Expansion.—After the Revolution the relation of government to geography was active rather than passive. First of all came the task of settling the boundaries between the new states, including the troublesome western claims; then followed the creation of new territories and the admission of new states. For a hundred years went on the annexation in succession of Louisiana, Florida, Oregon, California and New Mexico, Alaska, Porto Rico and the Philippine Islands (*see* ANNEXATIONS TO THE UNITED STATES) and American statesmen were bending their energies to solve the problem of extending the boundaries of the Union to the southern Gulf, northern streams, Pacific Ocean, and then farther afield.

Official Investigation of American Geography.—The English Government, as such, made little attempt to explore the interior of the continent; but the colonists pushed eagerly into the wilds. Governor Endicott early explored the Merrimac to its source, and left his initials on the rock at the outlet of Lake Winnepesaukee and in 1716 Governor Spottiswood made an official tour into the valley of Virginia.

The first Federal Government expeditions were those of Lewis and Clark to Oregon in 1803—1806 and of Pike to the source of the Mississippi in 1805 and to the Rocky Mountains in 1806. Many later explorations have

been made by military and scientific men. During and after the fifties elaborate surveys were made for transcontinental railroads. The government also organized the Wheeler Fortieth Parallel Survey and from 1871 to 1879 was pushed the survey west of the 100th meridian. Since 1882, the United States government has been engaged in mapping the whole United States, and about 1900 sheets have been issued as part of a general topographical map of the whole country, which can hardly be completed short of half a century to come.

Many of the states have made surveys of their own, intended to reveal the mineral wealth and to classify the lands; and they have published geological maps and atlases varying much in value. Some of the states have also coöperated with the Federal Government in mapping their own areas. Most of the western state universities have departments and laboratories for the study of the geographical conditions of their respective states.

The Federal Government maintains an elaborate Geological Survey (*see*) including a topographical branch of which the head is called chief geographer.

In addition, the Coast Survey of the United States has mapped the water fronts and a narrow strip, usually about three miles, extending inward. The surveys of coast and interior have extended to Alaska and the Philippine Islands; and the surveys for the Panama Canal have cleared up the topography of the isthmus and Nicaragua.

The Federal Government has also sent a few expeditions to other parts of the world, such as Lynch's Survey of the Dead Sea Basin in 1848, and various series of deep sea soundings. Outside the small number of Americans in the Philippines and Porto Rico the United States has never attempted to plant colonies outside its own continental domain; and Liberia is the only settlement in any of the eastern continents made by former inhabitants of the United States.

Overcoming Physical Obstacles.—The principal geographical task of the United States has been to annihilate the physical limitations of its setting. The Appalachian Mountains which once closed in the English colonies on the West have now for more than a century been penetrated by highways; first roads culminating in the National Road opened for use to the Ohio River in 1819; then waterways, of which the only through route is the Erie Canal completed in 1825; and now by more than a dozen railroad lines.

The problem of opening up the interior has been solved in part by government or subsidized canals, river and lake improvements; and, still more effectually, by railroads, most of the earlier ones aided by state subscriptions or by federal land grants or loans of money (*see* RAILROADS, STATE AID TO). Most of them received government aid from the localities through which they run. Several rail lines have traversed the portentous barrier of the Rocky Mountains, and the Great Basin and Sierras and Cascade Range beyond.

As a part of this problem of making the West available, the Federal Government has, till recently, continued to set up territories and provide them with governments; has defined and admitted states into the Union; and has dealt in a national fashion with problems like that of grain transit, silver production, and the opening up of irrigated lands, all of which brought a sectional strain upon Congress. The whole conservation (*see*) question is, to a large degree, geographical.

One of the greatest triumphs of the human mind in subduing nature through governments has been the success of a Republic extending over an area as large as all Europe west of Russia. The conditions of space, of vast belts of mountains, of distances extending not only across the continent, but thousands of miles further to Alaska and the Philippines, have all been overcome, and the nation has never been so eager as now to make nature the servant of the race, and at the same time to preserve the gifts of nature for later generations.

See AREA OF THE U. S.; FRONTIER IN AMERICAN DEVELOPMENT; GEOGRAPHIC BOARD OF THE UNITED STATES; GEOLOGICAL SURVEY; PHYSICS AND POLITICS; PHYSIOGRAPHY OF NORTH AMERICA; RESOURCES OF AMERICA; SECTIONALISM IN AMERICAN GOVERNMENT; WEST AS A FACTOR IN AMERICAN POLITICS; and under BOUNDARIES.

References: A. B. Hart, *National Ideals Historically Traced* (1907), chs. i, ii, *Epoch Maps* (rev. ed., 1910); A. P. Brigham, *Geographic Influences in American History,* (1903), chs. xi, xii; A. R. Colquhoun, *Greater America* (1904), chs. ii, vii; J. D. Whitney, *The U. S.* (1899), I; bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), §§ 30–35, 96, 97, 160; A. B. Hart *Manual* (1910), § 98 (lect. 2).

ALBERT BUSHNELL HART.

AMERICAN INSURANCE CO. vs. CANTER. Under a decree in admiralty rendered by a territorial court in Florida, Canter claimed title to a cargo of cotton. The Insurance Company also claiming title questioned the validity of the decree in the territorial court on the ground that such a court had no admiralty jurisdiction. In the opinion announced by Chief Justice Marshall for the court in 1828 the title of Canter was sustained (1 *Peters* 511, 7 L. Ed. 242). The case is authority for the following propositions: The United States can acquire territory from a foreign government under its power to carry on war and make treaties, and can govern such territory under that clause of the Constitution authorizing

Congress "to make all needful rules and regulations respecting the territory or other property belonging to the United States" (Art. IV, Sec. iii, ¶ 2), and perhaps also under an inherent general power to govern territory which is within the jurisdiction of the United States but not part of any state, the right to govern being the inevitable consequence of the right to acquire; that in legislating for such territory Congress possesses the general power of legislation possessed by the states with reference to their own territory; that territorial courts created under authority of Congress may exercise admiralty jurisdiction which is excluded from the jurisdiction of the state courts; and that such territorial courts are not United States courts created by Congress under authority given to establish inferior courts vested with portions of the judicial power (Art. III, Sec. 1). By way of dictum it is said that a treaty transferring territory to the United States transfers the allegiance of the subjects of the foreign state who remain in it, and inhabitants of the territory may therefore become citizens of the United States although not citizens of any state. See ADMIRALTY; ANNEXATIONS TO THE UNITED STATES; CITIZENSHIP; INSULAR CASES; TERRITORY, CONSTITUTIONAL QUESTIONS. E. McC.

AMERICAN NATIONAL PARTY. This party was an outgrowth in some measure of the National Christian Association. A convention was held in 1876 and drew up a platform, declaring that the God of the Christian scriptures is the author of civil government, that God requires and man needs a Sabbath, that prohibition is the true policy on the temperance question, that charters of secret lodges should be withdrawn, that the amendments to the Constitution should be preserved inviolate, that arbitration is the best method of maintaining peace, that the Bible should be used in educational institutions, that monopolies should be discountenanced and that the President and Vice-President should be elected by direct vote of the people. The party nominated James B. Walker for President and Donald Kirkpatrick for Vice-President. In 1880 candidates were again presented; the name used was the American Anti-Masonic Society. In 1884, the same elements—they can scarcely be called a party—met in convention at Chicago, and under the name of American Prohibition National party put forth a platform, similar to the earlier one; its candidate for the presidency, Samuel C. Pomeroy, retired in favor of the candidate of the Prohibition party (*see*). References: T. H. McKee, *National Conventions and Platforms* (5th ed., 1904). A. C. McL.

AMERICAN PARTY. The origin of "Nativism," or "Native Americanism," as a political issue is to be found in the opposition to foreigners which appeared about 1792, following the outbreak of war between England and France. The abuse of the Federalists by the Democratic-Republican newspapers, many of whose editors were of foreign birth, led to the passage, in 1798, of the Alien and Sedition acts (*see*). With the defeat of the Federalists in 1800, however, antipathy to aliens declined, and for some years after 1814 little was heard of it. The growth of the Roman Catholic church in numbers and wealth, together with the clannishness of its membership, principally Irish, and the ultra-conservative policy of its hierarchy, caused a revival of opposition in New York City in 1837. The movement was unsuccessful, but in 1843 the city elected a Democratic mayor, under whom the majority of the municipal offices were given to foreign-born citizens. The controversy, appealing to religious bigotry as well as to race prejudice, was embittered by sensational newspaper attacks upon Roman Catholics, and by riots in New York and other cities. In 1845 the movement threatened to attain national importance, four members of the House from New York and two from Pennsylvania being classed as Native Americans; but in the Thirtieth Congress, 1847–1849, the representation was reduced to one. About 1852 the agitation burst out afresh under the popular name of the "Know-Nothing" movement (*see*). The motive, as hitherto, was opposition to Roman Catholics and to foreign-born office-holders, but stimulated now by the increased foreign immigration which followed the famines in Ireland, in 1845–1847, and the European revolutions of 1848–1849. By secretly endorsing candidates of the Whig or Democratic parties the new organization was at first able to confound party managers, and to a considerable extent control elections.

In 1854, following the split in the northern Whigs, most of the latter who could not become Republicans joined the Know-Nothings, who now assumed the name of the American party. The state elections of that year in Massachusetts and Delaware were carried by the new party, and a large American vote was polled in New York and Pennsylvania; while many candidates elected as Republicans or Anti-Nebraska men were also Americans. The next year showed large inroads upon the Whigs in the southern states, where the foreign-born population was small. In February, 1856, a national convention of the party met at Philadelphia, and accepted a platform framed by the national council of the order. The platform declared that "Americans must rule America," and that "native-born citizens should be elected for all state, federal, and municipal offices of government employment, in preference to all others"; upheld the compromise of 1850 and the fugitive slave law; and denounced "the reckless and unwise policy" of the Pierce administration. An attempt to re-

ject the proposed platform on the ground that the national council had no authority to impose it, and to limit the choice of candidates to such as favored the Missouri Compromise (*see* COMPROMISE OF 1820; KANSAS NEBRASKA BILL), failed; whereupon many delegates from New England, Pennsylvania, Ohio, Illinois, and Iowa withdrew. Millard Fillmore (*see*) of New York was then nominated for President, and Andrew J. Donelson of Tennessee for Vice-President. The seceding delegates nominated John C. Frémont (*see*) of California for President and William F. Johnston of Pennsylvania for Vice-President. In September the Whig convention endorsed the nomination of Fillmore, but "without adopting or referring to the peculiar doctrines of the party which has already selected" him. A complete analysis of the vote is impossible, since the number of Americans who voted for Frémont, who was also the Republican nominee, and the number of Whigs who voted for Fillmore, cannot be ascertained. In a popular vote of 4,053,967, Fillmore received 874,534; but of the electoral votes he received only those of Maryland. New England and New York, the early strongholds of Native Americanism, gave their electoral votes for Frémont; while Pennsylvania and New Jersey, together with every border and southern state except Maryland, voted for Buchanan (*see*), the Democratic candidate. In 1857 the American party carried the state elections in Rhode Island and Maryland, and in the Thirty-Fifth Congress, 1857–1859, had five Senators and fourteen Representatives. In the Thirty-Sixth Congress there were two Senators from Maryland and Kentucky, and twenty-two Representatives, all from the border states of the South. In 1860 the remnant of the party was merged in the Constitutional Union Party (*see*).

See DEMOCRATIC PARTY; REPUBLICAN PARTY; WHIG PARTY.

References: L. D. Scisco, *Political Nativism in New York* (1901), ch. iii–vi.; T. C. Smith, *Parties and Slavery* (1906), 114–172.

WILLIAM MACDONALD.

AMERICAN PROTECTIVE ASSOCIATION. See A. P. A. PARTY.

AMERICAN RACE AND AMERICAN NATIONALITY. One of the notable effects of colonization in America has been the mingling of races in the new world. Though few but Portuguese went to Brazil, few but Spaniards to Cuba and the Spanish mainland, and few but French to Canada, all those races were much affected by admixture with the native Indians; and the West Indian and Brazilian colonies by the infiltration of negro blood. In almost all the Latin-American countries there is, therefore, a mixed race.

The English colonies, during the first half century, were occupied only by people of English stock, with little admixture with the Indians. Small but very persistent strains of Dutchmen and Swedes were added by the conquest of New Netherland in 1664; and a little later came considerable numbers of Germans and Scotch-Irish immigrants with some French Huguenots. Except for a few Jews, Highland Scotchmen, Irishmen, and Spaniards, these were the only non-English colonists previous to the Revolution. During the eighteenth century the negroes brought by force into America furnished a race element quite different from the white element, although there was some race fusion. Recent researches by the Census Bureau into the family names shown in the census sheets of 1790 make it clear that the non-English white element was not over a fifth or a sixth of the whole—most of it in the middle colonies. In the course of fifty years most of the non-English races except the Pennsylvania Dutch were amalgamated into what might fairly be called an American race.

The rising tide of immigration—19 millions from 1820 to 1900—has much altered this state of things. The census of 1910 showed that of the 92 million people in the continental United States about 10 million were negroes (including the mulattoes); about 13 million were born abroad; 13 million more were children of foreign born parents; probably 15 million in addition were descendants of immigrants who arrived after 1830. This leaves 41 million presumable descendants of the American stock of seventy years ago.

One obstacle to the process of union into one American race is religious divergence. There is not free intermarriage of the Irish, Poles, Hungarians, Italians, Bohemians, Greeks and many of the German Catholics with Protestants. The fact that the Pennsylvania Germans (commonly called Pennsylvania Dutch) though Protestants, after a century and a half in America still live much by themselves, suggests that the existing separate settlements of Italians, Hebrews, Poles, Bohemians and several other races will long adhere to their own language, religion and customs.

Two great influences are, however, at work to create a feeling of oneness if not of race unity. Into the public schools come hundreds of thousands of children eager to learn English, and many of them will eventually ignore their parents' language. The second influence is the possession of American citizenship—obtainable by any immigrant for himself and his family—valuable for its privileges in this country, and powerful when the possessor goes outside the national boundaries. Through these influences and the effects of time we may expect the various European race elements ultimately to constitute a common nationality.

See NATIVE AMERICAN RACE; POPULATION OF THE U. S.

References: U. S. Census, *Century of Population Growth* (1909); A. B. Hart, *Am. Ideals*

Historically Traced (1907), ch. iii; J. R. Commons, *Races and Immigrants* (1907); P. F. Hall, *Immigration* (1906); H. G. Wells, *Future in America* (1906); E. Eggleston, *Beginners of a Nation* (1897), *Transit of Civilization* (1901); E. E. Sparks, *Expansion of the Am. People* (1900); Lois K. Mathews, *Expansion of New England* (1909); Hugo Münsterberg, *Americans* (1904); A. C. Coolidge, *U. S. as a World Power* (1908), ch. ii, iii.

ALBERT BUSHNELL HART.

AMERICAN REPUBLICS, INTERNATIONAL BUREAU OF. See PAN-AMERICAN UNION.

AMERICAN SYSTEM. In the tariff debate of 1824 Henry Clay (*see*) dwelt at length upon the distress of the country, and declared that the time had come for adopting a "genuine American policy." By this was meant a policy which would create a home market, give employment to labor at home, and develop the nation's strength in all its varied forms of activity. The argument for protection was thus broadened to include all interests involved in national prosperity. The term did good service as a rallying-cry for all friends of protection. See TARIFF POLICY OF U. S. References: H. Clay, *Speeches* (Mallory ed., 1833), I, 496, II, 5. D. R. D.

AMNESTY. Amnesty is an oblivion of past offenses granted by a sovereign power. It is usually conditional upon a return to allegiance or the abandonment of criminal conduct. It differs from a pardon in that it is granted without regard to proof of the fact of guilt, while a pardon is in the nature of a forgiveness for guilt. See PARDON. E. McC.

AMNESTY, PROCLAMATION OF. An amnesty proclamation is a proclamation of pardon for offences against the United States issued by the President, under the provision of the Constitution giving him "power to grant reprieves and pardons for offences against the United States except in cases of impeachment" (Art. II, Sec. ii). The principal proclamations of amnesty were those by Presidents Lincoln and Johnson, in connection with reconstruction (*see*). Lincoln's proclamation of December 8, 1863, offered full pardon, and restoration of property rights, except in slaves, to certain persons participating in the war against the Union, on condition that they take an oath to support the Constitution, laws, decisions of the Supreme Court, and proclamations of the President of the United States. Some exceptions were made. A proclamation of March 26, 1864, debarred from the application of amnesty prisoners and persons paroled, and provided for the administration of the oath. May 29, 1865, President Johnson issued a proclamation excluding some classes from the amnesty privilege. On July 4, 1868, pardon was declared to almost all who had participated in the "rebellion." Full pardon was declared in the proclamation of December 25, 1868. See PARDON. References: J. D. Richardson, *Messages and Papers of the Presidents* (1899), VI, 213, 218, 310, 341, 547, 655, 708; J. F. Rhodes, *Hist. of U. S.* (1904-06), V, 525, 535; VI, 201, 324-327. T. N. H.

AMUSEMENTS, PUBLIC. Varieties.—In but few matters has the extension of government activity been more rapid of recent years than in recreation facilities. In addition to the customary city parks, municipal reereation facilities now include athletic fields, playgrounds, swimming pools and public baths, zoological gardens, botanical gardens, camping grounds, social centres, recreation piers, municipal concerts and lectures, public libraries, art galleries and museums. Governmental action is the direct outcome of the growing conviction that the negative attitude of protest against demoralizing forms of amusement will not suffice and that a positive program that insures ample opportunities for wholesome enjoyment is necessary.

Recreation may be either active or passive. In the first case, the individual takes part, as in all forms of athletics and dancing; in the latter the individual gains his recreation by passive sense-impressions as in band concerts, lectures, theatres and motion pictures. Each has its place in any comprehensive recreational program.

Advantages.—Municipal provision for athletic forms of recreation has an obvious justification. In addition to its physiological benefits, team play has a psychological value, now generally recognized by psychologists, educators and social workers. An important literature has grown up based on the "Theory of Play," which is tersely stated in the phrase "The boy without a play-ground becomes the man without a job." The basis of character is the will, and this function of the mind has the freest scope during recreation. Children at play often for the first time learn the meaning of self-restraint, the significance of coöperation and group action, and the necessity of playing according to rules. Such object lessons in the fundamentals of morality are invaluable in the development of any child.

Play activities in which individuals participate directly are difficult to carry out on a large scale under modern industrial conditions; a relatively small number can participate. The necessary time to reach the playground may not accommodate workers already exhausted physically by a long day's work and deadened mentally by the monotony incidental to minute subdivision of labor. Man living in primitive times had many chances of varying his occupation throughout the day. All his work was educational. He had the stimulus of seeing a piece of work begun and ended, and of enjoy-

ing the product. The growth of modern industry, with its deadening effects on laborers and its accompanying rapid development of cities brings the question of recreation to the forefront of public discussion.

Public Provision.—(1) The earliest legislation dealing with these matters was merely permissive in character—acts giving authority to municipalities to acquire land for park and play ground purposes. (2) Then followed measures authorizing school boards to permit the use of school buildings and grounds for purposes of recreation, and making it possible also to appropriate funds for the support of playgrounds and recreation centres. (3) The next step was to provide for the establishment of park boards and, later, of recreation commissions, which should be definite departments of the municipal government, charged with the task of providing facilities for public recreation; and also possessing authority to exercise some jurisdiction over certain commercialized forms of recreation.

One state provided that every community above a certain population should have an opportunity at the next election to say whether or not public playgrounds should be provided and maintained at municipal expense, thus entering upon legislation of a mandatory character. More recently, efforts have been made to fix a minimum amount of play space per child in connection with public schools, and to provide that a definite part of all additions to the area of cities should be devoted to provision for recreation.

Extent.—Chicago has put $11,000,000 into her park and playground system. In New York and in Cleveland, the board of education organizes a course of lectures and entertainments open to the public, which are held in school assembly rooms. In the evening recreation centres of New York, boys and girls are given opportunities for checkers and dominoes, ring games, gymnastic sports, basket ball games, folk dancing and amateur theatricals, at an expense to the city of three and one half cents per head per evening. Most of the larger cities make annual appropriations, either directly or through their park funds, for public, outdoor, summer concerts. New York appropriates $100,000 which is divided between the parks and recreation piers; Philadelphia, in 1912, appropriated $30,000; Boston, $19,000. The latter city also supports municipal concerts throughout the winter months. In Buffalo, the recess intervals in certain schools are filled with interesting games and sports through the help of the playground workers. In Hoboken and Milwaukee, popular dances are held under the auspices of the municipality. In Milwaukee there is an immense auditorium, half owned by the municipality, where 4,500 people, old and young, have participated at one time in dancing and health yielding merriment. The part which recreation plays in social progress receives increasing recognition and augurs well for the future. The movement is still in its infancy, but so well established that the near future will see even more rapid extension of government activity.

See Amusements, Regulation of; Art, Public; Health, Public Regulation of; Music, Public; Parks and Boulevards; Play Grounds.

References: L. F. Hamner, *Recreation Legislation* (1911); Joseph Lee, *Constructive and Preventive Philanthropy* (1911); "Public Recreation Facilities," in Am. Acad. of Pol. and Soc. Sci., *Annals*, XXXV, No. 2, (Mar. 1910); *Am. Year Book, 1910,* 737, *1911,* 330–335, *1912,* 372–377.

F. D. Watson.

AMUSEMENTS, REGULATION OF. The close connection between the health, safety and morals of the people, and such popular forms of amusement as theatres, dance halls and moving pictures, has forced the state to abandon its *laissez faire* policy in reference to public amusements. As the European uses the word, censorship does not exist in America and may be regarded as prohibited by the spirit of our constitutions. Nevertheless, the license tax system here in vogue furnishes an indirect means of public control; licenses may be refused to places of amusement, if shown to be disorderly or disreputable. The criminal law is generally held to be adequate for dealing with obscene plays or shows.

This licensing power is usually vested in the executive department of the city government, and exercised through a bureau of licenses—with varying conditions—for theatres, motion picture shows and dance halls. Thus in New York City motion picture shows accompanied by vaudeville, require the regular theatre or concert license issued by the police department and revocable only by the supreme court (fee $500). On the other hand, motion picture shows accompanied by songs and recitations only, and these not rendered on the stage, require but a common license granted by the mayor for $25, and revocable for cause at his discretion. The rapid introduction of motion pictures as a form of public entertainment has created a somewhat confused system of regulation, no less than seven public authorities in New York City being charged with duties respecting moving picture shows. Once a license is granted, moving picture shows are subject to periodical visits by inspectors of these seven authorities. In October, 1912, there were about 16,000 moving picture theatres in the United States, with a daily attendance of probably 7,000,000.

The present status of the theatre license law in most cities is totally inefficient in providing proper moral control. An investigating committee calls for "a properly worded law, making theatre licenses responsible for the performances given, making these licenses revoca-

ble in the same way every other license issued by the city or any of its departments is revocable, and making it possible to apply the criminal law, as it exists on the statute books for other licenses, to the theatrical license."

The partial failure thus far of the license plan to protect public morals in the motion picture field, has called into existence the National Board of Censorship, a private agency with headquarters in New York City. It is composed of public-spirited men and women, professional men, representatives of the municipal government, social organizations and of the chief combinations of manufacturers of moving pictures. It aims to make its standard of censorship a liberal one; and to coöperate with local organizations and civic societies in various cities by supplying lists of approved films. Its work has won much prestige among manufacturers. Chicago has an official committee appointed by the chief of police to pass upon all moving pictures exhibited in that city.

Public intervention in the management of dance halls is now widely demanded and during the past two years no less than 158 cities have passed appropriate ordinances. Methods and standards vary. In New York City 650 dance halls operate under licenses from the city bureau of licenses, enforcement resting with the police. In Kansas City, dance halls come under the board of public welfare. In Jersey City, there is a practically prohibitive tax on private dance halls. To meet the needs of the city, school houses have been opened at night for municipal dances under supervision. The more common practice in most cities still continues to be that of commercial dance halls licensed by the city.

See Amusements, Public; Building Laws; Gambling; Police Power; Public Morals, Care for; Social Evil, Regulation of.

F. D. Watson.

ANARCHISTS, EXCLUSION OF. The Anarchist Exclusion Act of March 3, 1903, permits the deportation of immigrants who are advocates of the overthrow of all government, or of the assassination of public officers. Its enactment was a result of the assassination of President McKinley. The Supreme Court has sustained this law in the case of U. S. *vs.* Williams (194 *U. S.* 279) as a legitimate exercise of the federal control over foreign relations. See Expulsion; Immigration; Naturalization; Rights of Citizens Abroad. References: J. C. Burrows, "Need of National Legislation Against Anarchism" in *North Am. Rev.*, CLXXIII (1901), 727–45. J. R. C.

ANARCHY. Anarchy is the name given to a social theory in which the rule of each individual by himself constitutes the only legitimate governmental authority. Its fundamental principle is extreme individualism and absence of all authority and government except that which is self imposed. A society organized on these lines would have, in place of a fixed central government, small groups of voluntary associations, federated only for the purpose of securing those results and satisfying such needs as may be voluntarily agreed upon by the various groups. According to anarchism the state is the chief instrument in permitting the few to monopolize the land, and in permitting the capitalist to appropriate an undue share of the accumulated surplus of production. Opposing the monopoly of land and capital, anarchists, therefore, also combat the state as the main support of that system, and in virtue of these views refuse to be a party to the present state organization. While all anarchists agree that the doctrine of *laissez faire* (*see*) should be extended to all departments of human activity, they are by no means agreed among themselves on all points. There are revolutionary and evolutionary anarchists; communistic and individualistic anarchists. But all are agreed in their opposition to fixed and compulsory forms of government. The term anarchy as applied to the no-government state of society is new, being first used in this sense by Prudhon in 1840 in a memoir entitled *Qu' est-ce que la propriété?* but its basic principle, individualism, is centuries old. Its history, therefore, may be traced, not merely in the works of its expounders such as Prudhon, Max Stirner (Caspar Schmidt), Bakunin and Most, but also in the various philosophic systems from Zeno (d. 267 or 270 B. C.) to Herbert Spencer. See Social Organization, Theory of. References: W. Godwin, *Enquiry Concerning Political Justice* (1793); reprint of Godwin's essay on "*Property*," ed. by H. S. Salt (1890); E. V. Zenker, *Anarchism* (1897); G. Adler, "*Anarchismus*" in *Handwörterbuch der Staatswissenschaften* (3d ed. 1909). K. F. G.

ANDREW, JOHN ALBION. John Albion Andrew (1818–1867) governor of Massachusetts, was born at Windham, Maine, May 31, 1818. In 1840 he began the practice of law in Boston, where he became prominent as an opponent of slavery. He was at first a Whig in politics, but in 1848 joined the Free Soil party, and after 1854 was a Republican. In 1858 he was a member of the Massachusetts house of representatives, and in 1860 headed the Massachusetts delegation to the Republican convention at Chicago. In 1861 he was elected governor. Foreseeing that war was inevitable, he devoted himself to the organization of the militia; and the Sixth Massachusetts Infantry was the first regiment to start for Washington after Lincoln's call for volunteers, in April, 1861. He also continued to urge the abolition of slavery, advocated the enrolment of colored troops, and in 1863 sent to the front the first colored regiment. At the same time he opposed

the arbitrary arrest of southern sympathizers in Massachusetts under federal authority, and after the war pleaded for a conciliatory policy towards the South. He retired from public life in 1866, and died at Boston, October 30, 1867. See CIVIL WAR, INFLUENCE OF, ON AMERICAN GOVERNMENT; MASSACHUSETTS. References: H. G. Pearson, *Life of John A. Andrew* (2 vols., 1904); W. Schouler, *Hist. of Mass. in the Civil War* (1868–71). W. MacD.

ANGELL, JAMES BURRILL. James Burrill Angell (1829–), educator and diplomatist, was born at Scituate, R. I., January 7, 1829. He graduated from Brown University in 1849, and in 1853, after a residence in Europe, became professor of modern languages and literature at Brown. In 1860 he resigned his professorship, and for the next six years was editor of the *Providence Journal*. From 1866 to 1871 he was president of the University of Vermont, and was then called to the presidency of the University of Michigan, which office he retained until 1909. It was his achievement to make the University of Michigan for many years the model for state universities throughout the country. In 1880 he was appointed minister to China, in that capacity negotiating a number of treaties. In 1887 he was a member of the Anglo-American commission on the Canadian fisheries, and in 1896 was chairman of the Canadian-American Deep Waterways Commission. In 1897–98 he was minister to Turkey. His publications include *Progress in International Law* (1875), *The Higher Education* (1897), and miscellaneous papers and addresses. See CHINA, DIPLOMATIC RELATIONS WITH; MICHIGAN. Reference: J. B. Angell, *Reminiscences* (1912). W. MacD.

ANIMAL INDUSTRY, BUREAU OF. The Bureau of Animal Industry is one of the bureaus of the Department of Agriculture and has charge of the work of the department relating to the live-stock industry. It conducts the inspection of live-stock, meat and meat-food products intended for interstate or foreign commerce under the act of Congress of June 30, 1906, and also has charge of the inspection of imported animals. It makes investigations in regard to the breeding and feeding of livestock and in regard to the dairy industry. It also carries on scientific investigations as to the nature, cause, and prevention of communicable diseases of livestock and takes measures for their control and eradication, frequently in coöperation with the authorities of the several states. During the fiscal year ending June 30, 1910, the bureau supervised the inspection in round numbers of 50,000,000 animals, and condemned about two per cent of the total number. It inspected nearly six and a quarter billion pounds of meat-food products, and condemned over nineteen million pounds. Besides its general activities the bureau has lately been especially interested, in connection with the War Department, in the breeding of horses for the cavalry service, and in coöperation with municipal authorities in the improvement of the milk supply of large cities. See AGRICULTURE, DEPARTMENT OF; AGRICULTURE, RELATIONS OF GOVERNMENT TO; HEALTH, PUBLIC REGULATION OF. References: Department of Agriculture, *Annual Reports*. A. N. H.

ANNAPOLIS. See NAVAL ACADEMY AT ANNAPOLIS.

ANNAPOLIS CONVENTION. Even during the Revolution, Maryland and Virginia felt the need of some understanding concerning the navigation of the Potomac. Attempts were made to reach agreement. In 1785 five commissioners met at Mount Vernon, drew up resolutions, and proposed that Pennsylvania coöperate in the plans for an arrangement on the general matter. Maryland now proposed that both Pennsylvania and Delaware come in. Thus the idea grew until finally all the other states were invited to send delegates to a convention to be held at Annapolis the first Monday in September, 1786. It was intended that the states should consider the trade of the Union and "how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony." When the convention met, only five states were represented. They, therefore, proposed not to discuss the question of trade but to try something further and bigger. Resolutions, which appear to have been drafted by Hamilton, were adopted. Pointing to the critical situation of the Union, they proposed that a convention of delegates from all the states meet in Philadelphia the second Monday in May, 1787, "to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled, as, when agreed to by them, and afterwards confirmed by the legislatures of every state, will effectually provide for the same." Thus the Annapolis convention ushered in the Federal Convention of 1787. See CONFEDERATION; FEDERAL CONVENTION. References: J. Elliot, *Journal and Debates of the Federal Convention* (1901), I, 115–119; G. Bancroft, *Hist. of the U. S.* (author's last revision, 1888), VI, 185–195; J. Fiske, *The Critical Period of Am. Hist.* (1892), 213–217; J. T. Scharf, *Hist. of Maryland* (1879), II, 530–536; K. M. Rowland, *Life, etc., of George Mason* (1892), II, ch. iii. A. C. McL.

ANNEXATION, DIPLOMATIC PRINCIPLES OF. Annexations to the United States have been accomplished by purchase,

conquest, direct incorporation, and discovery and occupation.

(1) The purchased areas are: Louisiana, (1803); East Florida, (1819); Gadsden purchase, (1853); Alaska, (1867); a few small Sulu Islands, (1900), and (the leased) Panama Canal Zone, (1903). In each case the cession was made by treaty ratified by the Senate, and the sums stipulated for were later appropriated by Congress. The House of Representatives has frequently asserted its right to refuse to pass legislation necessary to carry the treaties into effect, should it wish to do so (*see* JAY TREATY; ALASKA, ANNEXATION OF).

(2) The conquests include: West Florida, (1810–1814); New Mexico and California, (1846); and Porto Rico, Guam and the Philippines, (1898). These conquests have been ratified by subsequent treaties, which in all these cases provided for money payments as partial compensation.

(3) Direct cessions, accepted by joint resolutions of Congress, incorporated into the Union: Texas (1845), Hawaii, (1898).

(4) Discovery and first occupation gave the United States its title to Oregon. First effective occupation brought under its jurisdiction Baker's, Howland, Midway, Wake and a number of Guano islands. The title to Tutuila, recognized by the treaty of 1899, rests upon original cession from native tribes and upon first occupation.

The annexations have usually been followed by boundary disputes, many of which have resulted in the securing of still further territory. Louisiana led to the invasion of Florida; Texas to the Mexican conquests; New Mexico to the Gadsden purchase; Oregon to the San Juan arbitration; and Alaska to the British Columbia boundary controversy.

Land grants made by the former sovereign shortly before annexation have not been recognized as valid, as in West and East Florida and in Alaska.

The United States assumed the national debt of Hawaii; it made itself indirectly responsible for the debt of Texas by permitting the state to retain its public lands with which to satisfy its national obligations; but it absolutely refused to assume responsibility for the so-called Cuban, Porto Rican and Philippine debts.

The national treaties entered into by the previously independent states, Hawaii and Texas, have been considered to lapse upon annexation.

Annexations have frequently been made in spite of objections by other powers. Spain protested against the Louisiana purchase; Mexico against the incorporation of Texas; and Japan at first against the acquisition of Hawaii.

It has not been deemed necessary to obtain the consent of the inhabitants of the ceded territory. Except in the case of the Danish Islands (*see*), where the annexation project failed, there has never been a definite vote of the inhabitants upon the question of union with the United States.

American citizenship was either promised to, or immediately conferred upon, the people of Louisiana, Florida, Texas, New Mexico and California, Alaska (except the uncivilized tribes) and Hawaii. It was neither conferred upon, nor promised to, those of Porto Rico, Guam, Samoa and the Philippines. Eventual statehood was guaranteed to Louisiana, Florida, New Mexico and California; but not to Alaska, Hawaii, Samoa or the conquests of 1898.

See ALASKA, ANNEXATION OF; ANNEXATIONS TO THE UNITED STATES; ARBITRATIONS, AMERICAN; BRITISH NORTH AMERICA, DIPLOMATIC RELATIONS WITH; CALIFORNIA AND NEW MEXICO, ANNEXATION OF; CANAL ZONE; CUBA AND CUBAN DIPLOMACY; DEPENDENCIES; FLORIDA, ANNEXATION OF; HAWAII, ANNEXATION OF; LOUISIANA, ANNEXATION OF; MEXICO, DIPLOMATIC RELATIONS WITH; PACIFIC ISLANDS, DIPLOMATIC RELATIONS WITH; PHILIPPINES, ANNEXATION OF; TERRITORY, ACQUIRED, STATUS OF.

References: W. W. Willoughby, *Am. Constitutional System* (1904), chs. xii–xiv; A. B. Hart, *Foundations of Am. Foreign Policy* (1909), chs. iii, v, vi; J. B. Moore, *Digest of Int. Law* (1906), I, 342–385, 429–611, 746; V, 348–351.

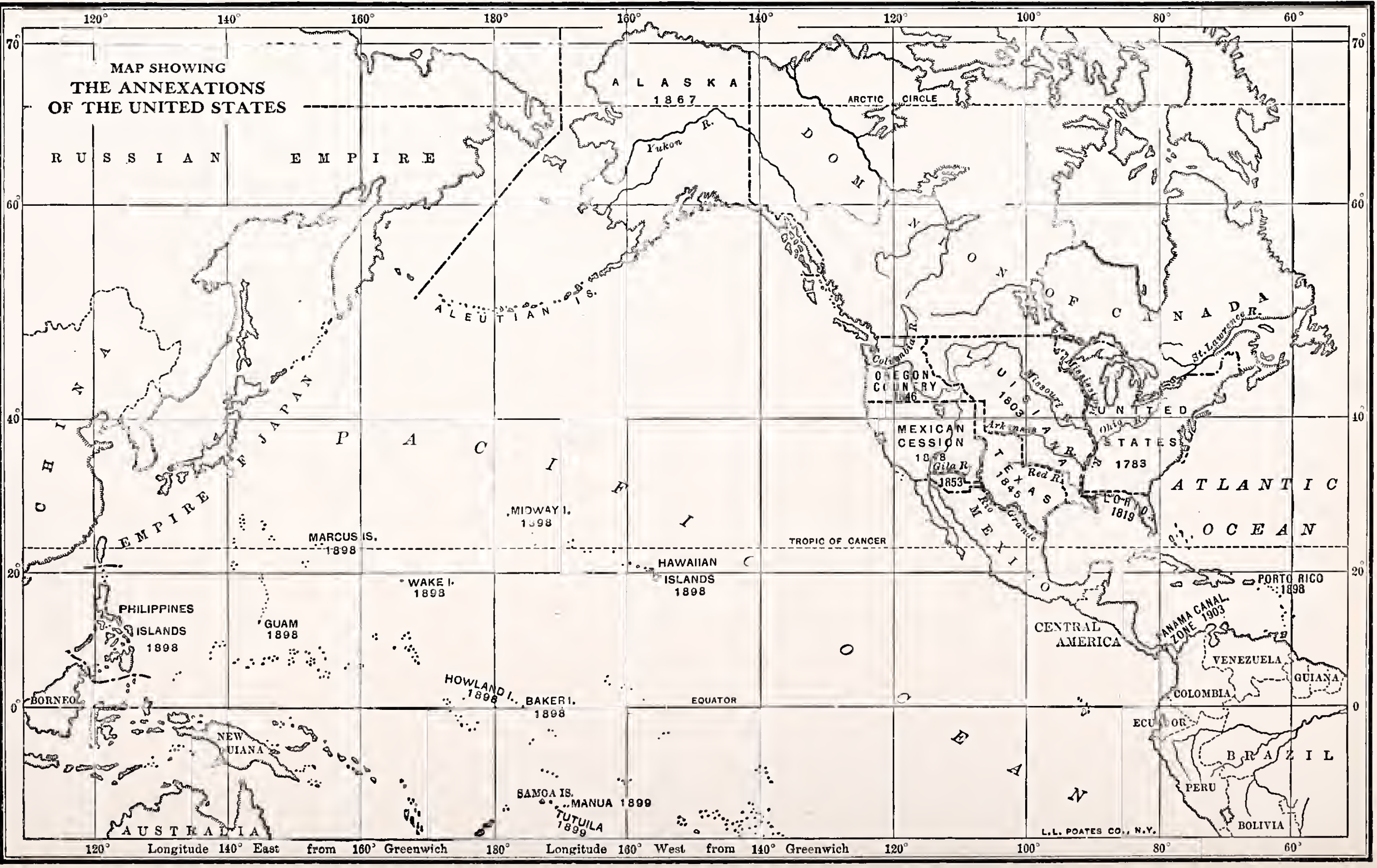
GEORGE H. BLAKESLEE.

ANNEXATIONS TO THE UNITED STATES

Expansion an Early American Policy.—Four-fifths of the present area of the United States has been secured by annexation. In the colonial days the people were accustomed to the idea of the acquisition of new lands, by the long continued wars against France; and during the Revolution they conquered the region north-west of the Ohio River and made an earnest but unsuccessful attempt to seize and annex Canada.

After the United States had won its independence, it found itself hemmed in on the south and west by Spanish Florida and Louisiana, provinces of a decaying colonial empire, which cut off the nation's natural approach to the Gulf of Mexico. The settlers west of the Alleghanies determined to gain eventual possession of these weakly-held Spanish lands.

Louisiana.—When, therefore, it became known in 1802 that Napoleon had secured



MAP SHOWING
THE ANNEXATIONS
OF THE UNITED STATES
RUSSIAN EMPIRE
ALASKA
1867
ARCTIC CIRCLE
Yukon R.
DOMINION OF CANADA
St. Lawrence R.
ALEUTIAN IS.
CHINA
EMPIRE OF JAPAN
PACIFIC OCEAN
OREGON COUNTRY 1846
Columbia R.
LOUISIANA 1803
Missouri R.
Mississippi R.
Ohio R.
Arkansas R.
Red R.
UNITED STATES 1783
MEXICAN CESSION 1848
Gila R.
1853
TEXAS 1845
Rio Grande
FLORIDA 1819
MEXICO
ATLANTIC OCEAN
TROPIC OF CANCER
MIDWAY I. 1898
MARCUS IS. 1898
HAWAIIAN ISLANDS 1898
WAKE I. 1898
PORTO RICO 1898
PANAMA CANAL ZONE 1903
CENTRAL AMERICA
PHILIPPINES ISLANDS 1898
GUAM 1898
VENEZUELA
GUIANA
COLOMBIA
HOWLAND I. 1898
BAKER I. 1898
EQUATOR
BORNEO
ECUADOR
NEW GUIANA
BRAZIL
PERU
SAMOA IS.
MANUA 1899
TUTUILA 1899
BOLIVIA
AUSTRALIA
L.L. POATES CO., N.Y.
Longitude 140° East from 160° Greenwich
Longitude 160° West from 140° Greenwich

Louisiana, it was felt that this "threatened the future destinies of the republic." Jefferson decided that if France would not sell New Orleans, which controlled the east bank of the Mississippi, he would take the first favorable opportunity of making an alliance with England in order to seize it. Livingston and Monroe were instructed to purchase not only New Orleans but, if possible, the Floridas as well. Congress appropriated $2,000,000 for the purpose and prepared for the alternative of war by authorizing the raising of 80,000 volunteers.

Napoleon's unexpected offer to sell the whole province of Louisiana was gladly accepted. The United States agreed by treaty to pay about $15,250,000; to give commercial preference in the ceded ports for twelve years to ships of France and Spain; and that the inhabitants should "be incorporated in the union of the United States and admitted as soon as possible . . . to . . . all the rights of citizens." In the debate in Congress the opponents of annexation claimed that the President and the Senate had no constitutional authority to acquire new territory, much less to promise to incorporate it into the union of the states; and that, even if the right existed, it was undesirable to do this, since the province was too far distant and the people unused to American institutions. Louisiana was at first placed by Congress under the practically absolute power of the President, but was soon given a regular territorial government.

Florida.—The United States next began a 19 year struggle to secure Florida, the western section of which, as well as Texas, was claimed as part of the Louisiana purchase. Congress, in 1804, made West Florida a revenue district, thus authorizing the President to take possession of it. But Jefferson preferred to negotiate with Spain to secure its formal session; when this was unsuccessful he appealed to Napoleon to force Spain to sell both West and East Florida. Congress voted $2,000,000 to aid the negotiations, but these failed, and American troops finally occupied West Florida in 1810 and 1813–14.

Soon after this, Spain, realizing that the United States was bound to have East Florida as well, either by cession or by conquest, consented to make the treaty of February 22, 1819, by which, in payment for the territory, the American Government agreed to adjust the claims of its citizens against Spain not to exceed $5,000,000; to allow Spanish ships a preference for twelve years in St. Augustine and Pensacola; and to give up its supposed rights beyond the Sabine River. It was provided that "the inhabitants . . . should be incorporated in the union of the United States as soon as may be consistent with the principles of the Federal Constitution." The treaty was not ratified until February 22, 1821, due to a dispute over certain large Spanish land grants, which the American administration insisted should be formally acknowledged to be void. Florida was placed by Congress under the absolute power of the President, but after a few months was given a territorial organization similar to the one instituted in Louisiana.

Texas and Oregon.—Not long after the Florida treaty was ratified the Government began efforts to secure Texas from Mexico which had just won its independence from Spain. The administrations of John Quincy Adams and Jackson made five attempts to obtain the whole or, at least, a part of it, and at one time offered as much as $5,000,000. But after the American settlers had established a republic in 1835, and had proposed union with the United States, this offer was not at once accepted, primarily on account of the opposition of the anti-slavery leaders. In Tyler's administration a treaty of annexation was rejected by the Senate (1844); but Congress later passed a joint resolution, March 1, 1845, that the territory included within the republic of Texas should be admitted as a state after it had formed a suitable government and constitution. A second joint resolution consummated the annexation, December 29, 1845.

The extreme boundary claims of Texas led to the Mexican War, but before the nation was free to engage in that enterprise the Oregon question had to be settled. As early as 1803 President Jefferson sent Lewis and Clark to explore and take possession of this practically unknown territory. The title of the United States, based on discovery and occupation, was disputed by Great Britain, and in some measure by Spain and Russia; but the American Government secured in 1819 a renunciation of Spain's claim north of 42°; and in 1824 of Russia's claim south of 54° 40′. A joint occupation with Great Britain of the intervening country was arranged by the treaty of 1818, but in the thirties a rapidly growing immigration of American settlers attracted such popular interest to Oregon that in the presidential compaign of 1844 one of the political battle cries was "54° 40′ or fight" (*see*). After Polk became President, however, upon the advice of the Senate, he signed a treaty (1846) with Great Britain, agreeing upon 49° as the boundary. This treaty gave rise to a dispute over the possession of the San Juan and neighboring island at the head of Puget Sound, which were finally awarded to the United States in 1872, by the arbitration of the Emperor of Germany. Congress provided no administration for Oregon until 1848, when it established a territorial government with a representative legislature.

California and New Mexico.—With the Oregon boundary settled, hostilities were begun with Mexico to secure California (*see*). By ordering General Taylor to occupy the section

along the Rio Grande in dispute between the United States and Mexico the latter was goaded into war. When this resulted in the complete overthrow of the Mexican Government, there grew up in the United States a strong sentiment in favor of annexing the entire country; but this possibility was prevented by the unauthorized negotiation of a treaty which President Polk and the Senate deemed it best to ratify in 1848, though it did not definitely cede New Mexico and California, since the administration claimed them by title of military conquest, but merely extended the boundary line to include them within the United States. In return Mexico was given $15,000,000 and was released from the payment of all American claims. The inhabitants were to be "incorporated into the union of the United States." Until 1850 the new territories were administered under the war power of the President.

A dispute over the Mexican boundary, together with the desire of the Government to obtain additional territory for a transcontinental railroad led to the Gadsden purchase (*see*) in 1853, for which the United States paid Mexico $10,000,000.

Completion of Annexation of Contiguous Territory (1853).—This purchase ended the first of the three great periods of American expansion, and completed the main part of the boundaries of the United States. Up to this time its limits had been extended to keep pace with the advance of the American frontiersmen, and to acquire territory actually needed in the future development of the nation. In every instance there was the intention to make the land acquired into full-fledged states. The policy of annexation, notwithstanding the temporary opposition of the anti-slavery leaders, had the strong support of a majority of the American people.

Annexations of Non-Contiguous Territory (1853–1898).—In the second period, 1853 to 1898, the annexations were few and relatively unimportant. Many were proposed but were prevented by anti-slavery opposition, and by the sentiment several times announced by the government that the acquisition of outlying territory was undesirable. A determined effort to obtain Cuba, however, was made by the slavery leaders. The Government offered Spain $100,000,000 in 1848, and in 1854 the Ostend Manifesto declared the right of the United States to seize the island if Spain refused to sell it. Treaties providing for the annexation of the Danish West Indies for $7,500,000, 1867; of the Dominican Republic, 1869; and of the Hawaiian Islands in 1854 and 1893, all failed of ratification by the Senate.

Alaska (*see*) was purchased by treaty from Russia, 1867, for $7,200,000. The acquisition was largely due to Seward's policy of expansion, and aroused little general interest. The treaty made no promise of statehood, but granted citizenship to Russian inhabitants who should remain, although not to the uncivilized tribes. Congress provided no government for the territory until 1884. The treaty led to two disputes with Great Britain; one over the seal fisheries in Bering Sea, and the other over the boundary between Alaska and British Columbia, which was only settled in 1903.

A number of islands, Guano Islands (*see*), Howland (*see*), Baker's (*see*) and the Midway group (*see*) in the Pacific were brought under American jurisdiction in this period, and Samoa came under a joint occupation.

Annexations of 1898–99.—The third period of American expansion, which began in 1898, brought under the sovereignty of the United States distant possessions none of which have any assurance that they will be admitted into the union as states.

Hawaii (*see*) was annexed, 1898, by joint resolution, on account of its importance as a naval base. The same year Wake Island (*see*) was occupied as a possible cable station. In 1900 Congress created Hawaii a fully organized territory, and made all former citizens of the Hawaiian republic citizens of the United States.

At the close of the war with Spain, the American Government demanded and obtained Porto Rico (*see*), Guam (*see*), and, after some hesitation, the Philippines (*see*). Spain was paid $20,000,000 and Spanish ships were admitted into the Philippine ports for ten years on preferential terms. Neither statehood nor citizenship were promised to any of the islands.

The treaty was attacked in the Senate on the same general grounds on which the Louisiana purchase was opposed in 1803—that the acquisition of such a distant territory, peopled by other races, violated both the Constitution and the spirit of the American Government. A particular objection was that these new possessions would probably be "held and governed permanently as colonies."

Porto Rico was administered for some months under the military authority of the President until its organization under the Foraker Act, April 12, 1900. The Philippine Islands were also under the Executive until Mar. 2, 1901, when Congress gave the President power to establish such government in the Islands as he should deem best. The legal status of the new possessions was settled in the Insular Cases (*see*), by the Supreme Court which decided that Porto Rico and the Philippines were not a part of, but were only appertaining to, the United States, and that Congress might legislate for them accordingly.

Tutuila (*see*) and neighboring Samoan islands confirmed by treaty with Great Britain and Germany (1899), together with Guam, have been placed under the administration of the Navy Department.

Summary.—The expansionist spirit has been

one of the great factors in creating the United States of to-day. It has always been strong, although sometimes latent, waiting for a favorable opportunity to call it into full power. There has been no important annexation, however, which has not been opposed by a minority usually on grounds of both constitutionality and expediency.

See ALASKA, ANNEXATION OF; ARBITRATIONS, AMERICAN; BRITISH NORTH AMERICA, DIPLOMATIC RELATIONS WITH; CALIFORNIA AND NEW MEXICO, ANNEXATION OF; CANAL ZONE; CENTRAL AMERICA, DIPLOMATIC RELATIONS WITH; CUBA AND CUBAN DIPLOMACY; DEPENDENCIES; FLORIDA, ANNEXATION OF; FOREIGN POLICY OF THE UNITED STATES; HAWAII, ANNEXATION OF; INTERNATIONAL LAW, PRIVATE; LOUISIANA, ANNEXATION OF; MEXICO, DIPLOMATIC RELATIONS WITH; PEACE, CONCLUSION OF; PACIFIC ISLANDS, DIPLOMATIC RELATIONS WITH; PHILIPPINES, ANNEXATION OF; TERRITORY, CONSTITUTIONAL QUESTIONS; TERRITORY, STATUS OF ACQUIRED; WAR POWER, CONSTITUTIONAL; and annexed states and territories by name.

References: J. B. Moore, *Am. Diplomacy,* (1905), ch. ix, *Digest of Int. Law,* (1906), I, 429–611; A. B. Hart, *Foundations of Am. Foreign Policy* (1905), chs. iii, v, vi, *National Ideals* (1907), ch. ii; G. P. Garrison, *Westward Extension* (1906), chs. i–ii, vi–xi, xiii–xv; W. F. Willoughby, *Territories and Dependencies of the U. S.* (1905), ch. i; W. M. Malloy, *U. S. Treaties and Conventions 1776–1909* (1910), 508, 656, 1107, 1121, 1521, 1595, 1651, 1690; Carl Becker, "Law and Practice of the U. S. in the Acquisition and Government of Dependent Territory," in Am. Acad. Pol. Sci., *Annals,* XVI (1900); David S. Jordan, *Imperial Democracy* (1899); C. E. Magoon, *Report on the Legal Status of the Islands Acquired by the U. S. During the War with Spain* issued by Division of U. S. Customs anl Insular Affairs, 1900; C. F. Randolph, *Law and Policy of Annexation* (1901); W. W. Willoughby, *Am. Constitutional System* (1904), ch. xi-xii; Theodore Roosevelt, *Winning of the West* (1889–96), VI, chs. iv, v. GEORGE H. BLAKESLEE.

ANTI-FEDERALISTS. Before the convention of 1787 met, the term "Anti-Federalists" was loosely given to all who opposed a stronger central system. It embraced those few who, discouraged with republicanism, wished to have a monarchy and those who felt that the states, acting alone or in three confederacies, could bring the country out of the difficulties that beset it. Submitting the Constitution to the states created a more definite issue, and the term was now applied to those who opposed the plan proposed. Most of these, and they were the most thoughtful, favored some plan of union, but thought that too much power was about to be given to the federal system. They were strongest in the large states, which felt most able to take care of themselves if there should be a general dissolution. Their opponents had acted together in the convention and went before the country with a well defined organization and well considered principles. The Anti-Federalists had to organize and devise a policy between the adjournment of the convention, September 17, and the assembling of the state conventions, which began with Pennsylvania, November 21. There was much mere declamation; but beneath it were three main arguments: (1) The constitution jeopardized state sovereignty. The bolder Federalists replied that this was a new doctrine and that the states were never truly sovereign. (2) It was not federal because it rested on the will of the people. Patrick Henry, the ablest Anti-Federalist, exclaimed: "Who authorized them to speak the language of *"We, the people;* instead of, *We, the States?"* (3) The Constitution contained no bill of rights (*see*). The Federalists met these arguments on their merits, but their best reply was the state of the country. Washington said that if the present plan were rejected it would be impossible to get another as good. Some of the Anti-Federalists urged another convention and others prepared amendments and proposed to make ratification conditional on their adoption. This plan came up in the Massachusetts convention, where the Federalists met it with a countermove. Let the Constitution be adopted, they urged, and the amendments sent to Congress in the assurance that they would be considered in good faith. The Anti-Federalists flouted the idea, but a few vacillating ones caught at it, and adoption was carried. The same appeal won in Virginia, New York, and Maryland; but it failed in North Carolina, where the Anti-Federalists postponed ratification, hoping that other states by doing the same could secure a modification of the plan of union. The pronounced Anti-Federalists thought the amendments were but a trick and prophesied that the last had been heard of them. When week after week of the first session of Congress passed and nothing was done about the amendments, Patrick Henry's criticisms became most bitter. At last twelve amendments were referred to the states, which adopted all but two. Nine of those accepted were in the nature of a bill of rights (*see*), and one, the tenth, provided that all power not granted to the Union or denied to the states should be reserved to the states or to the people. These words were so indefinite that they but slightly modified the authority of the Union. From this time the Anti-Federalist party rapidly disintegrated. Very few men were selected to launch a government they had been unwilling to create, nor could the people be held together to support a dead issue. The handful of the party in the first Congress, however, opposed Hamilton's plans for a strong govern-

ment. On that principle they were joined by some of the former Federalists, like Madison and Jefferson. Though their opponents dubbed them "Anti-Federalists" the name was a misnomer and soon gave way to the term "Republicans." See CONSTITUTION OF THE UNITED STATES, AMENDMENTS TO; DEMOCRATIC REPUBLICAN PARTY. References: A. C. McLaughlin, *Confederation and the Constitution* (1905), chs. xvii, xviii; J. S. Bassett, *The Federalist System* (1906), chs. ii, iii; E. Channing, *History of the U. S.* III (1912); G. T. Gordy, *Political History of the U. S.* (1903).

J. S. BASSETT.

ANTI-FEDERAL JUNTO. A name applied derisively to the group of seceding members of the Pennsylvania Assembly who left their seats when the call for the state convention was being considered in 1787, and later published "the first formal protest against the Constitution." O. C. H.

ANTI-IMPERIALISTS. Although there were pronounced differences of opinion, in Congress and in the country, regarding the causes and the necessity of the war with Spain, in 1898, both Republicans and Democrats agreed in supporting President McKinley in the vigorous prosecution of the war. When, however, on January 4, 1899, the treaty with Spain was submitted to the Senate, opposition at once developed. The leader of the Democratic minority, Arthur P. Gorman of Maryland, opposed particularly the annexation of the Philippines, not only as unnecessary and unwise in general, but as launching the United States upon a colonial or imperial career not in harmony with its history, and for which it was not fit. Similar objections were urged by Senators George F. Hoar of Massachusetts and Eugene Hale of Maine, Republicans, both of whom, together with Richard F. Pettigrew of South Dakota, also a Republican, voted against ratification. The treaty was ratified February 6 by a vote of 57 to 27; 40 Republicans, 10 Democrats, 3 Populists, 3 Silver, and 1 Independent voting in the affirmative, and 22 Democrats, 3 Republicans, and 2 Populists in the negative. The opposition to "expansion" or "imperialism" (*see*), as the policy of the administration had come to be called, was especially strong in Massachusetts, where independent voters were numerous, and in Chicago. The increase of the army consequent upon the acquisition of the Philippines led to violent protests by the Anti-Imperialists against militarism (*see*). When in February, 1899, following a resolution of the so-called Congress of the Filipino Republic, the Filipino forces began to attack the American troops, public opinion generally, though without enthusiasm, supported the administration; but the extreme Anti-Imperialists continued to proclaim Aguinaldo as a leader of an oppressed people, and later made specific charges against American officers and soldiers of cruelty and torture.

As the outcome of a meeting in Faneuil Hall, Boston, June 15, 1899, there was formed at Boston, November 19, the Anti-Imperialist League, the president of which was George F. Boutwell, who had been Secretary of the Treasury in Grant's first administration, and subsequently Senator from Massachusetts. About one hundred similar societies were eventually formed, representing all sections of the country, and claiming a combined membership of 50,000. Carl Schurz (*see*), Charles Francis Adams, David Starr Jordan, and numerous other prominent men enlisted in the movement or expressed sympathy with its objects. The principles of the various organizations were essentially the same, namely, the assertion of the inherent right of self-government under the American flag; opposition to colonial expansion and military rule, especially in the Philippines; and the demand for Filipino independence, immediate or in the near future, under the protection of the United States. An active propaganda was carried on by means of public meetings and the circulation of literature. The agitation was temporarily stimulated by the action of the postmaster at San Francisco in taking from the mails certain pamphlets, written and published by Edward Atkinson, a prominent Boston Anti-Imperialist, containing severe criticisms of the policy of military subjugation, pointing out the cost of imperialism, and emphasizing the danger to the health of the American soldiers, especially from venereal diseases. As the pamphlets were in this instance addressed to the members of the Philippine commission by name, the sanctity of the mails appeared to have been violated. In August, 1900, a "Liberty Congress" at Indianapolis endorsed the candidacy of William J. Bryan for President. With the complete establishment of civil rule in the Philippines in 1902, the Anti-Imperialist agitation ceased to be important.

See ANNEXATION TO THE U. S.; PHILIPPINES, ANNEXATION OF.

References: Anti-Imperialist League, *Reports* (1899–1910) and miscellaneous publications; E. Atkinson, *The Anti-Imperialist* (1899–1900), Nos. 1–6.

WILLIAM MACDONALD.

ANTI-LECOMPTON DEMOCRATS. The Anti-Lecompton Democrats were the Democrats under the leadership of Stephen A. Douglas, who opposed the admission of Kansas as a state with the Lecompton constitution recognizing slavery, as it had been submitted and ratified in 1857. The pro-slavery legislature submitted a constitution with a clause which provided that the people were not allowed to vote against the constitution, but must cast a ballot for it with slavery, or for it without

slavery. President Buchanan supported the constitution but Douglas opposed it. This caused the quarrel between Buchanan and Douglas, and the split in the Democratic party, which had important results for some time. The Lecompton constitution was re-submitted and was rejected. See DEMOCRATIC PARTY; KANSAS STRUGGLE. References: T. C. Smith, *Parties and Slavery* (1907), 212–225; J. F. Rhodes, *Hist. of U. S.* (1893), III, *passim.*

T. N. H.

ANTI-MASONIC PARTY. The Anti-Masonic movement had its immediate occasion in the abduction of William Morgan of Batavia, N. Y., in September, 1826, following the announcement of his purpose to reveal the secrets of Freemasonry; but the deeper causes of the agitation are to be found in the political and social reorganization which took place after 1814, with its new awakening of democracy, its projects of social reform, and its struggle for religious freedom. The widespread interest in the trial of Morgan's alleged abductors was further stimulated by the stout defence of Freemasonry by members of the order. In February, 1827, organized opposition to Freemasonry, as repugnant to both religion and good citizenship, developed in western New York, and in November secured the election of a number of Anti-Masons to the legislature. In the presidential election of 1828 the support of the Anti-Masons, who as yet had developed no effective organization, was sought by both Jackson (*see*) and John Quincy Adams (*see*), the first a Mason, while the second was not. Of the 36 New York electors, Jackson secured 20 and Adams 16. The election of 1829 was in the main favorable to the Jackson men, but the Anti-Masons were now better organized, and many National Republicans (*see*) acted with them; while the excitement was kept up by legislative investigations of the Morgan incident and of Masonry in general. The leading Anti-Masonic newspaper, The Albany *Evening Journal*, edited by Thurlow Weed (*see*), began publication in March, 1830.

In September, 1830, a convention of delegates from Massachusetts, Rhode Island, Connecticut, Vermont, New York, New Jersey, Pennsylvania, Delaware, Maryland, Ohio, and Michigan Territory met at Philadelphia, and voted to hold another convention September 26, 1831, at Baltimore, for the nomination of candidates for President and Vice-President. The loss of the state election of 1830 in New York was a serious reverse, and showed that the Anti-Masons were not yet a firmly united party; yet they now had Millard Fillmore (*see*) and William H. Seward (*see*) to represent them in the legislature, and had practically absorbed the National Republicans. The selection of national candidates was difficult. Adams's uncompromising opposition to Freemasonry in 1828 made him the natural choice, but he was not popular in New York. Clay (*see*), the recognized leader of the National Republicans, was favored by conservative Anti-Masons, and moreover needed Anti-Masonic support; but he was a Mason, and after unsuccessful efforts of his friends to show that he was not, he refused to give up his membership, and repudiated the Anti-Masonic party. Associate Justice McLean of the United States Supreme Court, formerly Postmaster-General under Adams, had been a Jackson supporter, but was now in opposition, and gave provisional consent to the use of his name for the presidency.

The Baltimore convention of September, 1831, the first of the unbroken line of national nominating conventions of our history, was composed of 113 delegates representing New England, the middle states, and Ohio and Indiana. National Republican opposition to McLean caused the latter to withdraw his name. On the first ballot William Wirt of Maryland was nominated; and although, in a speech before the convention, he declared that he was a Mason, and offered to withdraw if he had been named under any misapprehension, the nomination was unanimously reaffirmed. Amos Ellmaker of Pennsylvania was nominated for Vice-President. No platform was adopted, but an address to the people was issued. The nomination of Wirt alienated many radical Anti-Masons, but in New York, the stronghold of the party, the earlier extreme views were being abandoned, and the absorption of National Republicans was transforming the party into one of opposition to Jackson and the Albany regency (*see*). As the National Republicans adopted the Anti-Masonic electoral tickets in New York and some other states, the Anti-Masonic popular vote cannot be ascertained. Of the electoral votes, Wirt and Ellmaker received only the seven of Vermont. The New York State election was carried by the supporters of Jackson.

The election of 1832 represents the high-water mark of the Anti-Masonic movement. Thereafter there was no hope for a national ticket. In New York the party, which had split on the question of the United States Bank (*see*), was divided again in 1833 over Clay and the tariff, and lost the state election. Anti-Masonry then merged with the new Whig party. In January, 1833, Webster (*see*) accepted a presidential nomination at the hands of some Anti-Masonic members of the Massachusetts legislature, and had some support in Pennsylvania and New York. In November, 1838, a convention at Philadelphia, representing Massachusetts, New York, Pennsylvania, and Ohio, nominated Harrison (*see*) and Webster; but Webster was replaced by Tyler to please the southern Whigs and by 1840 the party designation disappeared.

The course of the movement in states other than New York requires only brief mention. In Pennsylvania the Anti-Masons elected some members of the legislature in 1829, and a larger number in 1830, but in 1832 the Democrats carried the state. An alliance with the Whigs in 1834, together with the leadership of Thaddeus Stevens (*see*), caused a revival, and in 1835 the two parties got control of the legislature; but in 1836 the Democrats were again successful, and the Anti-Masons were absorbed by the Whigs. The "Buckshot War" (*see*) of 1838 marks the end of the movement in Pennsylvania. In Ohio, where Anti-Masonry was neither radical nor strong, union with the Whigs took place in 1834. In New Jersey, the Anti-Masonic vote of less than 500 in 1832, if it had been given to Clay, would have given him the electoral vote of the state. In New England the movement took an organized form in every state except New Hampshire. Vermont elected an Anti-Masonic ticket in 1831, 1832, and 1833, and a governor in 1834. Rhode Island elected a governor, with Democratic aid, in 1832, and, by union with the Democrats, from 1833 to 1835. In Massachusetts, where Anti-Masonry was practically identical with National Republicanism, an unsuccessful attempt was made in 1833 to elect Adams to Congress. Thereafter the party dwindled, the radical minority eventually joining the Democrats, while the majority became Whigs.

See THIRD PARTIES; WHIG PARTY.

References: C. McCarthy, "The Antimasonic Party" in Am. Hist. Asso. *Reports* (1902), I, 365–575; Thurlow Weed, *Autobiography* (2 vols., 1883–84), I, *passim;* E. Stanwood, *Hist. of the Presidency* (1898), chs. xiii, xv.

WILLIAM MACDONALD.

ANTI-MONOPOLY CONVENTION. Met in Chicago in 1884 and nominated Benjamin F. Butler for President and Alanson M. West for Vice-President. The same candidates were nominated by the Greenback National party in convention at Indianapolis two weeks later. **See** GREENBACK PARTY. A. C. McL.

ANTI-NEBRASKA MEN. Those in the Whig and Democratic parties in 1854 who opposed the Kansas-Nebraska Bill of Stephen A. Douglas, which repealed the restriction of the Missouri Compromise of 1820, prohibiting slavery from that part of the Louisiana purchase north of 36° 30′. The principle for which the "Anti-Nebraska" men stood was resistance to the further spread of slavery. The term was more particularly applied to the members of the Democratic party who held to this policy, since the leaders of that party were chiefly responsible for the repealing act. All the northern Whigs in Congress voted against Douglas' repealing act, and were therefore "Anti-Nebraska," while few of the Democrats who voted for repeal were returned to Congress in the fall elections of 1854. The "Anti-Nebraska Democrats" in the country coöperated with the "Anti-Nebraska Whigs" and the Free Soilers, and they were an important factor in the formation of the Republican party. To the Congress elected in 1854 a majority consisting of Whigs, Know Nothings and Free Soilers was returned in opposition to the Democrats. The Anti-Nebraska principle and policy controlled the action of the lower house in this Congress and became the originative and controlling principle of the new Republican party. **See** AMERICAN PARTY; FREE SOIL PARTY; KANSAS-NEBRASKA BILL; REPUBLICAN PARTY; WHIGS. **References:** J. F. Rhodes, *Hist. of U. S.* (1893), I; T. C. Smith, *Parties and Slavery* (1906); J. A. Woodburn, *Political Parties and Party Problems* (1905); J. W. Burgess, *Middle Period* (1897); E. Stanwood, *Hist. of the Presidency* (1898). J. A. W.

ANTI-RENT RIOTS. A term applied to a series of disturbances in New York State (1839–1846) growing out of the opposition of the tenants, principally upon Rensselaerswyck and Livingston manor, to the payment of rent to the descendants of the original Dutch "Patroons." O. C. H.

ANTI-SALOON LEAGUE. The Anti-Saloon League is an association with the purpose of promoting state-wide prohibition, or, in lieu of it, local prohibition, and enforcement of the laws. It is organized in all states and carries on its propaganda through paid officials at an annual outlay of more than half a million dollars. **See** DRUNKENNESS, REGULATION OF; LIQUOR LEGISLATION; LOCAL OPTION; PROHIBITION. **References:** Anti-Saloon League, *Year-Book, 1911*, and year by year. J. K.

ANTI-SLAVERY CONTROVERSY. See SLAVERY CONTROVERSY.

ANTI-SNAPPERS. Those Democrats in New York in 1892, who, favoring the nomination for the presidency of ex-President Cleveland, opposed the "snap" convention arranged for by Senator David B. Hill, the head of the state machine of the party. The "Anti-Snappers" were anti-machine men and they organized a counter convention and sent a body of delegates to the national convention to contest the seats claimed by the delegates sent by the "Snappers'" convention. **See** SNAPPERS.

J. A. W.

ANTI-WAR DEMOCRATS. The Democrats in the North during the Civil War who sympathized with the Confederacy and opposed the war for the Union. They were also called "Peace Democrats." They denounced Lincoln and the war, opposed the draft and discouraged

enlistments, and predicted failure of the war to restore the Union. The opprobrious nicknames of "Copperheads" (*see*) and "Butternuts" were applied to them, and many of them organized themselves into a secret political organization, hostile to the war and the administration, known as the "Sons of Liberty" or "Knights of the Golden Circle" (*see*). See DEMOCRATIC PARTY. J. A. W.

A. P. A. PARTY. The A. P. A., or American Protective Association, was organized in 1887, and was directed against the power of the Roman Catholics in the schools and other public institutions. It had its beginnings in the earlier Know Nothing party (*see*). For a time it grew rapidly, having in 1896, according to its president, a membership of two and a half millions, and controlling a vote of four millions. The A. P. A. was a secret organization, for political rather than theological purposes. It was characterized by its president as the "strongest and purest political force that the western world ever knew." The reasons given for the formation of the A. P. A., were the violation of the spirit of the Constitution by persons holding government positions; opposition to the immigration system; the control of immigrant voting, the political corruption and prostitution resulting; Roman Catholic attack on the public school system; Roman Catholic control of cities; the increase in untaxed church property; desecration of the American flag by priests; the Pope's declaration that the United States is the one bright hope of the future for his cause. Believing the Roman Catholic principle was to serve first the interests of Roman Catholicism, and to resist laws hostile to the orders of the Roman Catholic church, the A. P. A. concluded that the Romanist could not be a good American citizen, and therefore should not be given offices or public employment.

There was from its beginning much opposition to the A. P. A. No political party could endorse its policies, because of the large Roman Catholic vote. Candidates sought the support of this society, and many members of Congress, irrespective of party, promised to support its doctrines. Failing to graft itself on another party, the organization rapidly declined. The opposition to the A. P. A. from the Roman Catholics was natural; but almost equally strenuous was that from Protestants. Dr. Washington Gladden, a prominent Protestant minister and writer, disclosed its forgeries, misrepresentations, and exaggerations and charged it with being opposed to the Christian rule of treating enemies, even if Roman Catholics were enemies. An investigation disclosed that not nearly so many Roman Catholics held public positions as were reported by the A. P. A. The organization has ceased to be of any consequence in political affairs.

See AMERICAN PARTY; KNOW NOTHINGS.

References: J. H. Traynor, "Aims and Methods of the A. P. A." in *North Am. Rev.*, CLIX (1894), 67–76; "Policy and Power of the A. P. A.," *ibid*, CLXII (1896), 658–666; J. L. Spalding, "*Catholicism and Apaism*," *ibid.*, CLIX (1894), 278–287; Washington Gladden, "The Anti-Catholic Crusade" in *The Century*, XXV (1893–4), 789–795. T. N. HOOVER.

APPEALS FROM LEGAL DECISIONS. The removal of causes at law, or in equity, from a court of inferior to one of superior jurisdiction for the purpose of obtaining a review, and sometimes a retrial because of alleged error, injustice or informality. Appeal is of civil law origin and includes a review of both the law and the facts. See CERTIORARI; WRITS OF ERROR. H. M. B.

APPELLATE COURTS. See COURTS, APPELLATE.

APPELLATE JURISDICTION. The power and authority of a superior court to take cognizance of, to hear and determine a cause, upon appeal, for the purpose of revising or correcting the proceedings in such cause in the inferior or trial court or other tribunal. This may be upon appeal, writ of error or certiorari. See APPEALS FROM LEGAL DECISIONS; CERTIORARI; WRIT OF ERROR. H. M. B.

APPOINTMENT OF MEMBERS OF CONGRESS TO OFFICE. The Constitution of the United States (Art. I, Sec. vi. ¶ 2) says "No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time." The significance and purpose of this clause is apparent. In one or two cases questions have arisen concerning its application, notably in the case of appointment of a Senator to the Cabinet in cases where the salary of Cabinet officers was increased during the time for which such a Senator was elected. It has been considered that, if a person, so appointed, voluntarily surrenders the increased emolument, this clause of the Constitution does not render him ineligible.

The Constitution also declares that "no Person, holding any office under the United States, shall be a Member of either House during his Continuance in Office" (*Ibid*). This provision was evidently made for the purpose of sharply distinguishing between the executive and legislative branches. It has been necessary to define the word office. The judiciary committee of the House has decided that members of commissions appointed to make investigations but having no legislative, executive or judicial powers, and also visitors to academies, and trustees of public institutions appointed by the law of the Speaker are not officers within

the meaning of this clause. And a distinction has also been made "between the performance of paid services for the executive, like temporary service as assistant United States attorney, and the acceptance of an incompatible office." Moreover, the House has declined to hold that "a contractor under the government is constitutionally disqualified to serve as a member." On the other hand, a militia officer in the District of Columbia and persons holding commissions in the army have been considered disqualified. Distinction has also been made between a member of Congress and a member-elect. The member-elect may apparently defer until the meeting of Congress his choice between the seat and an incompatible office. See OFFICE; REPRESENTATIVES IN CONGRESS. Reference: A. C. Hines, *House Manual* (1909), §§ 93–96. A. C. McL.

APPOINTMENTS, BUREAU OF. The Bureau of Appointments is one of the bureaus of the Department of State. It is charged with all matters relating to the appointment and promotion of persons in the diplomatic and consular service of the United States. See CONSULAR SERVICE; DIPLOMATIC SERVICE; STATE, DEPARTMENT OF. References: Secretary of State, *Annual Report;* J. A. Fairlie, *National Administration of the U. S.* (1905), 79. A. N. H.

APPOINTMENTS, DIVISION OF. The Division of Appointments is one of the divisions of the United States Treasury Department. The appointments division keeps the records of Treasury Department employees, their admission to the service, their promotions, dismissals and resignations. It also performs the work arising in connection with the bonding of the employees of the Department. See BONDING OF EMPLOYEES; TREASURY DEPARTMENT. Reference: Secretary of the Treasury, *Annual Report.* A. N. H.

APPOINTMENTS TO OFFICE

Exercise of Appointing Power.—Power of appointment to public office is exercised by all three branches of government—legislative, executive and judicial. A great majority of the offices, however, are connected with the executive branch of government and this is the main reason why the executive authority alone is restricted in the exercise of the appointing power. Legislative bodies, practically without exception, are permitted to select their own officers and employees without interference or regulation by the executive and judicial authorities. The judicial branch of government is also, with exceptions of minor importance, independent in its use of the appointing power to subordinate positions connected with the courts. Appointment by the executive is usually subject to confirmation by some other body. Although there is some legal authority for holding appointment to be an executive act, to be exercised only by executive authorities, it cannot, in view of the lack of provision for absolute separation of powers and the ruling methods of appointment in different jurisdictions, generally be so held.

Act of Appointment.—Appointment consists in the act of selection of a person for a position and is complete when such selection has been made by the officer or body possessing the legal power to appoint. If approval by some other authority is required, the act of appointment is complete as soon as that authority has acted favorably. The issuance of a certificate of appointment or commission is not the act itself, but merely evidence of the appointment. A legal distinction is maintained between officers and employees based on the responsibility and duties of the positions, and appointment and tenure of office are affected to a certain degree by this distinction, but it is difficult to draw an exact line of demarcation.

Federal Appointments.—The Constitution, in addition to vesting in the President the "executive power" requires that "he shall nominate and by and with the advice and consent of the Senate shall appoint, ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law" (Art. II, Sec. ii, ¶ 2). It was not intended, however, that the President should exercise the function of selecting all persons for minor positions. In the same section it is provided that "Congress may, by law vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments." From the establishment of the first departments the great majority of appointments have been vested in the heads of departments. In the executive civil service of to-day, out of a total of 395,460 positions, the number of presidential appointments is 10,397.

History of the Appointing Power.—The first forty years of administration of the appointing power show comparatively little abuse of it to gain either personal or partisan advantage. The spirit of the Constitution was observed; the President exercising individual judgment and responsibility for his appointees.

A theory of geographical distribution of appointments was maintained and from the beginning of the second administration of Washington a decided preference in appointment was given to adherents of the party in power. The character of the applicant, however, remained a prime consideration. Attempts to gain an undue partisan advantage through distribution of the patronage were not unknown. Such cases appear in the "midnight appointments" by President Adams and the partisan removals and appointments made by Jefferson in carrying out his policy of securing a balance between the parties in the civil service. Tenure of office was not restricted by law and remained at the pleasure of the President until the passage of the Four Years Law in 1820, which established a fixed term for district attorneys, collectors of customs, naval officers, surveyors, and others having the custody of public money and served as the entering wedge for the introduction of the spoils system ten years later.

Period of the Spoils System.—The era of the spoils system (*see*) in the federal service began with the administration of President Jackson, although he is by no means to be held alone responsible for its introduction. It was rather the product of new democratic doctrines which had been growing with the extension of the country and the introduction of new and less highly educated elements into control of governmental affairs. The growth of the service made it increasingly difficult for the President and heads of departments to exercise an actual personal judgment in the selection of subordinates. Jackson's full sympathy with the movement hastened the advent of the spoils system. In the name of "reform" a policy of proscription against political opponents in office, conducted on a scale unknown to the earlier period, was carried out. Positions as fast as vacated were filled by Jackson's adherents. This policy of proscription and use of the offices for purely partisan appointments, once started, was continued by President Jackson and his successors without serious let or hindrance until 1871 and in a more modified and restricted form to the present day.

The spoils system derives its name from a speech made by William L. Marcy of New York, in the Senate, in which he said, "The politicians are not so fastidious as some gentlemen are as to disclosing the principle upon which they act. They see nothing wrong in the rule that to the victors belong the spoils of the enemy." From its first introduction the new policy was the subject of bitter denunciation and leading statesmen were not lacking to point out the abuses resulting from it. Candidates for the presidency thought it well to declare against it, but on assuming office permitted it to continue untrammeled. Indeed, it would have been impossible to uproot it in the absence of a mechanical system for regulating appointments and competitive examinations for this purpose were then unknown. The spoils system, with all its vicious by-products, inevitably tended toward laying far greater stress upon political services rendered than upon character and fitness and led to the padding of the service, waste and neglect of duty. The Senate, through exercise of the power to reject the nominations made by the President, gained an increasing control over appointments, and after 1850 the system known as the "courtesy of the Senate" (*see*) was in full swing. Positions of minor importance came in like manner to be regarded as patronage of representatives belonging to the party in power. The inability of the President to secure information in regard to candidates and the desire to apportion the appointments geographically were largely effective in securing the congressional control over patronage. The spoils system reached its culmination during the Civil War, when little public attention was directed toward the civil service.

The Period of Reform.—Attempts at reform following English precedents were made prior to the Civil War, but proved ineffective. In 1853 an act was passed providing for the classification of clerical positions by salary grades and appointment only after examination. As this act, however, provided only for non-competitive or "pass" examinations, which were to be conducted by boards selected by the heads of departments, they presented no serious check to the growth of the spoils system. After the war, comprehensive bills providing for competitive examinations were introduced. Thomas A. Jenckes, a representative from Rhode Island, who had made a thorough study of the competitive system established for the British Indian and the English services in 1854–55, was foremost in advocating this reform. The first reform measure which became law, however, was passed in 1871 as a rider to an appropriation bill. It empowered the President "to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof." Under this authority a civil service commission was appointed by President Grant, with George William Curtis as its first chairman, which proceeded to formulate and establish a complete system of rules for competitive examinations for admission to the service. The President, however, failed to support the commission and in 1875 after a refusal by Congress to make appropriations for continuance of the work, suspended the rules. They were revived for the New York custom house and post office in 1877, but the first comprehensive and detailed civil service act became a law January 16, 1883, after the entire country had been awakened to the evils of the existing system through the murder of President Garfield by a disappointed office-

seeker. This law provided the necessary machinery for carrying out a complete competitive system of appointment and prohibited political assessments. As passed, it applied to less than 14,000 offices, but authority was given the President to extend its jurisdiction. It has been extended by successive Presidents until the competitive system now covers two-thirds of the entire executive civil service of the Federal Government.

State Appointments.—The development of the appointing power in state government has followed substantially the same lines as in the Federal Government. The governor and heads of state departments exercise the greater part of the appointing power; but state government is not so highly centralized as the National Government, and there exist a number of elective heads of departments exercising the appointing power entirely independent of the governor. In almost all states, appointment by the governor is subject to confirmation by the state senate and his power of removal is likewise restricted. Terms of office are usually provided for all of the more important officials, whether elective or appointive. In Maine, New Hampshire and Massachusetts a council still survives. This is an elective body exercising the power of confirmation of appointments.

The spoils system developed much earlier in state and local government than in the federal service. In New York and Pennsylvania it had become the recognized system of appointment to office as early as 1805. It never gained an equal foothold in the southern states, but throughout the North and West it has prevailed to the present day. Little attempt has been made to check its abuses; at the present time there are only six states which have adopted civil service laws applying to the state service.

Municipal Appointments.—There is no uniform system of appointment to office in city and local government. Under the council system, which first prevailed in American cities, appointments were made by the elective city councils, except that the most important city officials were appointed by the governor of the state. With the adoption of the doctrine of the separation of powers in city government, the mayor acquired a power of appointment restricted by provision for confirmation of appointment by the city council or, where the bicameral system was adopted, by the upper house of the city council. The city council has, however, retained a power of appointment of heads of departments and subordinates inconsistent with the precedents established in national and state government and the mayor's power is further limited by the large number of elective officials usually to be found in city government. Terms of office are the rule for important city officials. In those cities which have adopted the theory of a responsible mayor, generally known as the "Brooklyn plan," the mayor is given unrestricted power of appointment and removal over heads of departments. This is provided for in the charter of the city of New York (*see*). Under the commission form of city government (*see*), the power of appointment is usually lodged in the city council. In county, town and village government, all of the important officials are elective. Civil service laws are in force in over 200 cities, including all cities in New York, Massachusetts and Ohio, in seventeen counties in New York and in Cook County, Illinois. They have been applied to the seven largest villages in New York State as well, but have no application in smaller units, except to the police and fire departments in a number of towns in Massachusetts.

See Civil Service Commission; Civil Service Examination; Civil Service, Federal; Civil Service, State; Executive and Congress; Executive and Executive Reform; Inferior Offices; Mayor and Executive Power in Cities; Merit System; Office; President, Authority and Influence of; Promotions in the Civil Service; Removals from Office; Senate; Spoils System; State Executive; Tenure of Office; Term of Office.

References: C. R. Fish, *Civil Service and the Patronage* (1905), "Removal of Officials by the President of the United States," in Am. Hist. Asso., *Annual Reports* (1899), I, 67–86; L. M. Salmon, *Appointing Power of the President*" in Am. Hist. Ass. *Papers* (1886), I, No. 5; J. H. Finley and J. F. Sanderson, *Am. Executive* (1908); J. A. Fairlie, *National Administration* (1905), index; P. S. Reinsch, *Readings in Am. Fed. Gov.* (1909), index; E. B. K. Foltz, *Federal Civil Service as a Career* (1909), ch. vii; D. B. Eaton, *Civil Service in Great Britain* (1880); F. J. Goodnow, *Comparative Administrative Law* (Student's ed., 1903), II, 22–25; U. S. Civil Service Commission, *Reports;* National Civil Service Reform League, *Publications.* Elliot H. Goodwin.

APPORTIONMENT

Of Congressmen.—Two Senators from each state compose the United States Senate, while the number of members of the lower house from each state varies with the population. A long contest in the Constitutional Convention of 1787 between the delegates from the smaller states, who insisted upon the equal representation of the states, as such, in Congress, and those from the larger states, who advocated making popu-

lation the basis of representation, resulted in a compromise whereby members of the upper house were to be equal in number from all the states and chosen by their legislatures; those of the lower house to be chosen by popular vote and apportioned according to population. Every state must have at least one representative, and the number sent from the several states varies from one in a few of the least populous to 43 in the state of New York. The first House of Representatives contained 65 members apportioned to the states by mere guessing at their relative population (Const. Art I, Sec. ii, ¶ 3).

In the discussion of methods for the practical application of the constitutional rule for apportioning representatives contention again developed between the two conflicting principles of states' rights and nationalism. A basis of 30,000 was determined upon, and the question arose, shall the number of representatives be the quotient obtained by dividing the whole population of the United States by that number, or shall it be the sum of the quotients obtained by dividing the populations of the several states separately by 30,000? The second plan was finally adopted and prevailed for fifty years, no attention being paid to fractions.

After the census of 1840 the population was divided by 70,680, the newly established ratio. To each state was apportioned as many representatives as this number was contained times in its whole population, with an additional representative to every state having a fraction of more than one half the divisor. This rule was modified in 1853. The whole number of representatives was first determined; then the whole population was divided by that number to find the ratio, and the population of each state was divided by the ratio, the quotient being the number of Representatives for the state. The number of Representatives still lacking to make up the total agreed upon was divided among the states having the largest fractional remainders. By this method representatives were sometimes given for remainders of less than one-half and at other times not given for remainders of more than one-half. Occasionally it happened that an increase in the size of the House by one would decrease the representatives apportioned to some one state. A method introduced in 1910 assumed that the divisor was a continuous quantity between certain limits, changing, that is, by indefinitely small increments. The critical points at which the decimal part of the quotient for each state passes one-half can be easily determined and divisors were selected midway between each two critical points. A series of tables was thus obtained, each apportioning one more representative than its predecessor and each apportioning one representative for every major fraction and none for any minor fraction.

DATES OF APPORTIONMENT ACTS AND RATIO OF POPULATION TO EACH REPRESENTATIVE

Census	Date of Apportionment Act	Ratio
1910	Aug. 8, 1911 (37 Stat. L., 13)	211,877
1900	Jan. 16, 1901 (31 Stat. L., 733)	194,182
1890	Feb. 7, 1891 (26 Stat. L., 735)	173,901
1880	Feb. 25, 1882 (22 Stat. L., 5)	151,911
1870	Feb. 2, 1872 (17 Stat. L., 28)	131,425
1860	May 23, 1850 (9 Stat. L., 428-432)	127,381
1850	May 23, 1850 (9 Stat. L., 428-432)	93,423
1840	June 25, 1842 (5 Stat. L., 491)	70,680
1830	May 22, 1832 (4 Stat. L., 516)	47,700
1820	Mar. 7, 1822 (3 Stat. L., 651)	40,000
1810	Dec. 21, 1811 (2 Stat. L., 669)	35,000
1800	Jan. 14, 1802 (2 Stat. L., 128)	33,000
1790	Apr. 14, 1792 (1 Stat. L., 253)	33,000
	Constitution, 1789	30,000

The presence of the negro in the South has been, from the first, a disturbing factor. The Constitution provided that congressional representation from the states should be "according to their respective numbers," but that only three fifths of the slaves should be counted. This gave the white southern population an excess of representation over that of the free states; but the total population of the slave states had less than had the total population of the North. With the abolition of slavery by the Thirteenth Amendment the question of apportionment of Representatives was again raised. The Fourteenth Amendment provided that representation should be determined by the extent of the franchise which each state should adopt. Any state denying to any class of male citizens the right to vote, for other than specified reasons, should have its representation reduced in like proportion. That is, if the state should give full negro suffrage it would have full representation. But the Fifteenth Amendment followed immediately, and by it the right to limit the suffrage because of race, color or previous condition, was denied to the states. The apportionment required by the Fourteenth Amendment has never been legally recognized. All the states have full representation in Congress, though many of them limit the suffrage for reasons other than those sanctioned by the amendment (*see* NEGRO SUFFRAGE; SUFFRAGE CONDITIONS IN THE UNITED STATES).

The number of representatives for a state having been fixed by Congress, the first business of the state legislature next following is usually the determining of the districts for the election of congressmen. These districts must be of contiguous and compact territory and as nearly as practicable of equal population. The dominant party frequently condescends to unworthy scheming and trickery in the arrangement of election districts, for the sake of party advantage, as is shown by the prevalence of "gerrymandering" (*see*). The "shoe string" (*see*) districts in several states and the "saddle bag" district in Illinois are notorious examples. Congressmen belonging to the party in power sometimes exercise a controlling influence over the division of the state in order

NUMBER OF MEMBERS OF THE HOUSE OF REPRESENTATIVES UNDER EACH APPORTIONMENT

States	Constitutional Apportionment	First Census, 1790	Second Census, 1800	Third Census, 1810	Fourth Census, 1820	Fifth Census, 1830	Sixth Census, 1840	Seventh Census, 1850	Eighth Census 1860	Ninth Census, 1870	Tenth Census, 1880	Eleventh Census, 1890	Twelfth Census, 1900	Thirteenth Census, 1910
Alabama	----	----	----	1	3	5	7	7	6	8	8	9	9	10
Arizona	----	----	----	----	----	----	----	----	----	----	----	----	----	1
Arkansas	----	----	----	----	----	1	1	2	3	4	5	6	7	7
California	----	----	----	----	----	----	2	2	3	4	6	7	8	11
Colorado	----	----	----	----	----	----	----	----	----	1	1	2	3	4
Connecticut	5	7	7	7	6	6	4	4	4	4	4	4	5	5
Delaware	1	1	1	2	1	1	1	1	1	1	1	1	1	1
Florida	----	----	----	----	----	----	1	1	1	2	2	2	3	4
Georgia	3	2	4	6	7	9	8	8	7	9	10	11	11	12
Idaho	----	----	----	----	----	----	----	----	----	----	1	1	1	2
Illinois	----	----	----	1	1	3	7	9	14	19	20	22	25	27
Indiana	----	----	----	1	3	7	10	11	11	13	13	13	13	13
Iowa	----	----	----	----	----	----	2	2	6	9	11	11	11	11
Kansas	----	----	----	----	----	----	----	----	1	3	7	8	8	8
Kentucky	----	2	6	10	12	13	10	10	9	10	11	11	11	11
Louisiana	----	----	----	1	3	3	4	4	5	6	6	6	7	8
Maine	----	----	----	7	7	8	7	6	5	5	4	4	4	4
Maryland	6	8	9	9	9	8	6	6	5	6	6	6	6	6
Massachusetts	8	14	17	13	13	12	10	11	10	11	12	13	14	16
Michigan	----	----	----	----	----	1	3	4	6	9	11	12	12	13
Minnesota	----	----	----	----	----	----	----	2	2	3	5	7	9	10
Mississippi	----	----	----	1	1	2	4	5	5	6	7	7	8	8
Missouri	----	----	----	----	1	2	5	7	9	13	14	15	16	16
Montana	----	----	----	----	----	----	----	----	----	----	1	1	1	2
Nebraska	----	----	----	----	----	----	----	----	1	1	3	6	6	6
Nevada	----	----	----	----	----	----	----	----	1	1	1	1	1	1
New Hampshire	3	4	5	6	6	5	4	3	3	3	2	2	2	2
New Jersey	4	5	6	6	6	6	5	5	5	7	7	8	10	12
New Mexico	----	----	----	----	----	----	----	----	----	----	----	----	----	1
New York	6	10	17	27	34	40	34	33	31	33	34	34	37	43
North Carolina	5	10	12	13	13	13	9	8	7	8	9	9	10	10
North Dakota	----	----	----	----	----	----	----	----	----	----	1	1	2	3
Ohio	----	----	1	6	14	19	21	21	19	20	21	21	21	22
Oklahoma	----	----	----	----	----	----	----	----	----	----	----	----	5	8
Oregon	----	----	----	----	----	----	----	1	1	1	1	2	2	3
Pennsylvania	8	13	18	23	26	28	24	25	24	27	28	30	32	36
Rhode Island	1	2	2	2	2	2	2	2	2	2	2	2	2	3
South Carolina	5	6	8	9	9	9	7	6	4	5	7	7	7	7
South Dakota	----	----	----	----	----	----	----	----	----	----	2	2	2	3
Tennessee	----	1	3	6	9	13	11	10	8	10	10	10	10	10
Texas	----	----	----	----	----	----	2	2	4	6	11	13	16	18
Utah	----	----	----	----	----	----	----	----	----	----	----	1	1	2
Vermont	----	2	4	6	5	5	4	3	3	3	2	2	2	2
Virginia	10	19	22	23	22	21	15	13	11	9	10	10	10	10
Washington	----	----	----	----	----	----	----	----	----	----	1	2	3	5
West Virginia	----	----	----	----	----	----	----	----	----	3	4	4	5	6
Wisconsin	----	----	----	----	----	----	2	3	6	8	9	10	11	11
Wyoming	----	----	----	----	----	----	----	----	----	----	1	1	1	1
Total	65	106	142	186	213	242	232	237	243	293	332	357	391	435

The following representation was added after the several census apportionments indicated and is included in the above table: First—Tennessee, 1. Second—Ohio, 1. Third—Alabama, 1; Illinois, 1; Indiana, 1; Louisiana, 1; Maine, 7; Mississippi, 1. Fifth—Arkansas, 1; Michigan, 1. Sixth—California, 2; Florida, 1; Iowa, 2; Texas, 2; Wisconsin, 2. Seventh—Massachusetts, 1; Minnesota, 2; Oregon, 1. Eighth—Illinois, 1; Iowa, 1; Kentucky, 1; Minnesota, 1; Nebraska, 1; Nevada, 1; Ohio, 1; Pennsylvania, 1; Rhode Island, 1; Vermont, 1. Ninth—Alabama, 1; Colorado, 1; Florida, 1; Indiana, 1; Louisiana, 1; New Hampshire, 1; New York, 1; Pennsylvania, 1; Tennessee, 1; Vermont, 1. Tenth—Idaho, 1; Montana, 1; North Dakota, 1; South Dakota, 2; Washington, 1; Wyoming, 1. Eleventh—Utah, 1. Twelfth—Oklahoma, 5. Thirteenth—Arizona, 1; New Mexico, 1.

to get rid of an undesirable member or to add to the party strength in the House. If a state has not been divided into districts all the Congressmen are elected by general ticket. The same is true if the representation has been reduced by Congress. If the number of Representatives has been increased and the state has not been redivided before the election, the additional members are chosen by general ticket.

State Legislators.—In most states the unit of representation is the county, though in some of the older states the township is the unit. It is frequently required by law that county lines shall be regarded in arranging legislative districts. In New York, for example, a county may not be divided, except that two or more districts may be included within a county. Generally the districts approximate numerical equality but great inequalities appear in a few of the states which retain the original privileges of their local areas. In some cases each county has one and only one senator, regardless of population. In Rhode Island each town has one senator, the city of Providence being entitled to no more than a small village. Massachusetts is the only one of the New England states which has fully adopted the numerical

system. The inequality and consequent injustice of the apportionment in certain of the older states tend to strengthen the state machine and enlarge opportunities for corruption. The existence of very large cities has led to constitutional provisions for restricting their power in the legislature. The city of New York may never have more than one third of the members of the state legislature. Similar restrictions are established with regard to the representation in the legislature of cities in Pennsylvania.

As a rule the division of the state is left wholly to the legislature; but in some states (*e. g.*, New York and Michigan) the legislature provides only for senatorial districts, leaving those for members of the lower house to the local authorities. Very great differences appear in the states in respect to the details of legislative apportionment and innumerable abuses and practical difficulties have developed. "Gerrymandering" is rife and the supreme courts are often called upon to settle election contests. Many earnest efforts are being made to abate the evils which have arisen in connection with the systems in vogue. One of the most important of these is the plan of minority representation (*see*) in use in Illinois. In that state senatorial and assembly districts are identical, each district electing one senator and three assemblymen. Each voter is allowed three votes for members of the assembly. In practice the system has proved unsatisfactory.

Municipal Legislators.—The state retains, in varying degrees and in diverse particulars, some control over city government. It grants municipal charters and supervises certain departments of the local administration. The practically universal form of municipal organization consists of a mayor and council, both elected by popular vote, the first representing the executive, the latter the legislative arm. Very great diversity exists in the structure and powers of the council. Most often it consists of a single body elected by wards or districts, and usually for a term of one or two years. A considerable number of cities have a bicameral council, one house being elected by districts, one member to each, the other and the smaller house, by the whole city or by larger districts. City officials divide the municipality into wards or districts for election purposes. Unfortunately the influence of national and state party interests enters into local affairs and the districts are often "gerrymandered" for political purposes, and by this and other devices the direct participation of individual voters in their local government is much restricted in most cities.

Within quite recent years a few cities have substituted a "commission" system for the council system (*see* COMMISSION SYSTEM). By that plan the question of apportionment is eliminated. A small body of commissioners, elected at large and presided over by a mayor who is one of their number, unites all legislative and executive authority in itself. It passes all ordinances and votes all appropriations. The members apportion among themselves the headship of the main departments of administration, the chiefs appointing the minor officials. Over all the mayor has general supervision, but no veto power over acts. All legislative and administrative powers are thus centralized in few hands, the highest administrative ability is demanded in the conduct of the city's business, and responsibility is definitely located.

See COMMISSION SYSTEM OF CITY GOVERNMENT; CONGRESS; DISTRICT SYSTEM; GERRYMANDER; HOUSE OF REPRESENTATIVES; STATE LEGISLATURE; WARDS.

References: P. S. Renisch, *Am. Legislatures and Legislative Methods* (1907), 196–213, *Readings in Am. State Gov.* (1911), 120–129; B. A. Hinsdale, *Am. Gov.* (2nd ed., 1895), 157–159; A. B. Hart, *Actual Government* (1903), 128; R. L. Ashley, *The Am. Federal State* (1902), 148; J. Bryce, *Am. Commonwealth* (4th ed. 1910), 485–488; F. J. Goodnow, *Municipal Government* (1909), ch. x; J. A. Fairlie, *Essays in Municipal Administration* (1908), 129–133; W. B. Munro, *City Government by Commission* (1913); H. Bruere and W. Shepardson, *The New City Government* (1912). JESSE MACY.

APPORTIONMENT OF DIRECT TAXES. See TAXES, DIRECT, APPORTIONMENT OF.

APPRAISAL OF IMPORTED GOODS FOR DUTIES. Appraisal is the valuation of goods at the time and place of import for entry. It is made by officials known as appraisers (*see*). Appraised value, according to existing law, is the actual market value or wholesale price of the merchandise in the country whence the goods are imported. As a preliminary basis for guidance the appraiser has before him the invoice submitted by the importer, which was originally filled out at the place of shipment and certified to by the consular officer of the United States residing in that district; and with the invoice is information added by the collector of the port as to the classification of the goods. The appraiser also retains packages from shipment for purposes of examination. He does not, however, necessarily rely upon this evidence alone; he may summon the importer and other competent witnesses familiar with the market, to give testimony; and he is also in possession of published price lists and private market letters from abroad, and of reports made by special revenue agents in foreign countries.

When the actual market or foreign wholesale price cannot be clearly determined, or when foreign manufacturers consign goods directly to an agent in the United States, a dif-

ferent procedure may be followed. It is then the duty of the appraiser under the administrative tariff acts of 1890 and later, to ascertain the cost of production, which must include every item of expense embracing the wear and tear of machinery, counting house expenses estimated at not less than 10 per cent, and a profit of not less than eight or more than 50 per cent. And to this must be added the cost of packing cases, coverings, labels, cartage, and other charges in getting the goods ready for shipment. If this method be not available the appraiser may take into consideration the wholesale price of such merchandise in the United States, making allowance for duties, cost of transportation, insurance, and a commission at a rate not exceeding six per cent.

Treasury regulations as to appraisal are rigorously in favor of the Treasury and against the importer. If merchandise is invoiced at an average price the duty is assessed upon the whole invoice at the rate to which the highest valued goods in the invoice are subject. The decision of the appraiser as to value is final, unreversible even by the collector or by the Secretary of the Treasury, save that an appeal may be taken by the importer or by the collector in behalf of the Government to the Board of General Appraisers. If the appraised value exceeds the value declared by the importer, additional duties are imposed amounting to one per cent of the value for each one per cent that the appraised value exceeds the declared value; and if the appraised value exceeds the declared value more than 50 per cent the entry may be held to be fraudulent, which exposes the importer to the danger of a severe penalty.

See Appraisers, General, Board of; Appraisers of Duties; Tariff Administration.

References: J. A. Fairlie, *National Administration* (1905), 102; J. D. Goss, *Hist. of Tariff Administration* (1890), U. S. Treasury Dept., *Customs Regulations* (1908).

Davis R. Dewey.

APPRAISERS, GENERAL, BOARD OF. In order to secure uniformity in appraisal of imported goods (*see*) at the different ports of entry, to expedite settlement of disputed cases, and to check fraudulent entries, the Customs Administrative Act of 1890 provided for a Board of General Appraisers, composed of nine persons with an office in New York. Its duties are of the most responsible character. (1) Upon protest or appeal from the importer or collector it reviews the appraisement made by a local appraiser. (2) On question of value the board is a tribunal of last resort. (3) On questions of procedure involved in the original act of valuation, as for example in reckoning value in terms of currency other than that of the country whence the goods were imported, or on questions of classification, a further appeal may be taken to the Court of Customs Appeals (*see*). The general appraisers have no power even to review their own decision. The board, however, has not fulfilled expectations as to prompt settlement of cases. On June 30, 1911, the number of classification cases pending was 170,855, an increase of 54,000 in a single year. According to the present dilatory procedure, settlements cannot be made within two years of the time of protest, which necessarily places a heavy burden upon the small importer. See Tariff Administrations. **Reference:** U. S. Treasury Department, Board of General Appraisers, *Annual Reports.*

D. R. D.

APPRAISERS OF DUTIES. Appraisers are officers of the customs service who, under the direction of collectors of ports, determine the value of imported merchandise. In addition to valuation they must describe the merchandise in such terms as will enable a collector to classify the goods. See Appraisal of Imported Goods for Duties; Tariff Administration.

D. R. D.

APPRENTICESHIP. Among the numerous readjustments forced upon the industrial world by the mechanical inventions of the last century and a half, not the least important is the practical abolition of apprenticeship. In mediaeval Europe, and down at least to the beginning of the nineteenth century, it was almost universal. It was originally a system under which anyone who desired to follow a skilled trade was compelled to work under the direct supervision of a master workman for a period of years, usually seven. The services of the apprentice belonged to the master, who pocketed the proceeds of his work in return for the instruction given. The master was expected to teach every branch of the trade and to make of his apprentice a thoroughly trained workman. The contract of apprenticeship was safeguarded by legal regulations, and the aid of the law might be invoked by either master or apprentice to compel the other to fulfill its conditions. The purpose of the system was originally, and always ostensibly, to secure thorough training on the part of those entering upon any trade or profession. It came to be used, however, in some cases at least, as a means of maintaining a partial monopoly of certain trades, since the members of the trade could restrict the number of apprentices. The apprenticeship system has practically ceased to exist in all the factory industries. See Labor Organizations; Labor, Protection to.

T. N. C.

APPROPRIATION OF PROPERTY. Property for public purposes may be appropriated by a government either under the power to tax or the right of eminent domain. Appropriation by right of eminent domain takes property

from an individual in excess of his share of contribution to a public burden, for which, therefore, he should receive a special compensation. The payment of a tax is a duty, and creates no obligation on the part of the government other than the proper application of the tax to a public benefit. See Purchase of Public Supplies and Property; Eminent Domain; Public Revenue, Sources of.

D. R. D.

APPROPRIATIONS, AMERICAN SYSTEM OF

Federal System till 1865.—Two provisions in the Federal Constitution control the making of appropriations by Congress: (1) no money shall be drawn from the Treasury but in consequence of appropriations made by law (Art. I, Sec. ix, ¶ 7); (2) no appropriation for the army shall be for a longer term than two years (Art. I, Sec. viii, ¶ 12). In the act of September 2, 1789, establishing the Treasury Department, the Secretary was directed to prepare and report to Congress estimates of public expenditures. Aside from this formal duty, the executive branch has no official part in the framing of appropriation bills except the presidential power of veto. The grant of money bills, according to the American system of government, is jealously guarded by the legislature. Although the Constitution does not expressly direct that appropriation bills shall originate in the House of Representatives, it was early assumed that the chamber which had the initiative in framing revenue bills should have similar control over expenditures.

The Secretary of the Treasury annually obtains statements from the several administrative departments as to their needs, and submits them to the House of Representatives in what is known as the Book of Estimates. In transmitting this statement, the Secretary acts simply as an agent. He does not revise the estimates or attempt to bring them into harmony with estimated revenue. The adjustment, if there be one, is left to Congress. While this system has the merit of giving the legislative branch complete control over the expenditure of public funds save for the veto, it has also the effect of scattering responsibility, thereby leading to wasteful and uneconomical appropriations. The evil was not so marked, when the appropriation bills were all entrusted to the committee on ways and means, which had charge of revenue bills. The consideration of income and expenditures was thus centered in the same committee.

Committee on Appropriations (1865).—In 1865, owing to the great extension of legislative business and responsibility occasioned by the Civil War, it was decided to relieve the committee on ways and means of the duty of preparing appropriation bills, and to delegate this task to a new committee on appropriations. Although responsibility for revenue and expenditure was thus divorced, responsibility for the latter still remained in the hands of a single committee. The committee on appropriations, in framing each separate bill, knew what would be demanded in every other bill.

Subdivision of Appropriation Bills (1880).—A more serious change was made in 1880 and 1885, when the committee on appropriations, accused of neglecting important departmental needs, was deprived of a considerable part of its power by the creation of new committees to prepare bills for separate departments of administration. Fourteen appropriation bills were thus distributed to eight different committees, as follows: Committee on appropriations, six bills; (1) legislature, executive and judicial; (2) District of Columbia; (3) fortifications; (4) pensions; (5) sundry civil; (6) deficiency; (7) agriculture, by the committee on agriculture; (8) army; (9) Military Academy, by the committee on military affairs; (10) diplomatic and consular, by the committee on foreign affairs; (11) Indian, by the committee on Indian affairs; (12) navy, by the committee on Navy affairs; (13) post office, by the committee on the Post Office; (14) rivers and harbors, by the committee on rivers and harbors.

Under this system of divided initiative there is a tendency for each committee to magnify the importance of the governmental activities with which it is especially concerned, and for which it often endeavors to secure as large an appropriation as possible without reference to the merit of claims made by other departments. Particularly is this true of the grants authorized by the committees which have in charge each a single bill. For example, the six appropriation bills reported by the Committee on Appropriations, at the first session of the Sixty-third Congress (1912) totalled $17,000,000 less than the estimates submitted by heads of departments; while the appropriations reported by all the other committees were $28,000,000 in excess of the estimates. It was, therefore, claimed in congressional debate that if the Committee on Appropriations had control of all appropriation measures, and applied the same scrutiny and revision to all these bills as it did to those still under its own care, there would have been a saving of $62,000,000 instead of $17,000,000.

As to the wisdom of dividing the work of the original committee on appropriations, there is a difference of opinion. Allowing for increase of population, the increase of expenditures in the six years following the change of 1880 as compared with the preceding six

years was $262,000,000; on the other hand it is claimed that under the older system the needs of certain branches of government were not intelligently and adequately met. Particularly was this true of the postal service.

Annual Appropriations.—Appropriations are made in three different forms: annual; permanent specific; and permanent annual. (1) The annual appropriations appear in the bills already named. By an act of 1874 (June 20) it was ordered that all unexpended balances of appropriations (with certain exceptions) which shall have remained on the books of the treasury for two fiscal years, shall be carried to the surplus fund and covered into the treasury. This was designed to cut off the payment of accrued claims, and to confine officers of the Government to the allowance and payment of liabilities within three fiscal years. The exceptions were in favor of: (a) permanent specific appropriations; (b) continuing appropriations, as for rivers and harbors and public works; (c) pay of the army and marine corps, whose service is often performed on long cruises; (d) claims arising under a treaty with Great Britain and pre-existing contracts.

(2) Permanent specific appropriations, are those which are specifically made for certain definite ends, but which remain available until the money is spent. In this class are appropriations for the construction of public buildings, fortifications, and improvements of rivers and harbors, the execution of which necessarily cannot be prescribed within exact time limits.

(3) Permanent annual appropriations do not require the annual vote of Congress but rest upon the previous enactment of laws relating to the establishment and conduct of government, particularly those which are fundamental to its very existence. Here, for example, are to be found appropriations for the collection of customs duties, the salaries of judges, refunds and taxes collected through error, the payment of interest on a public debt, and the requirements for the sinking fund. A committee of the Fifty-Second Congress reported that there were 185 separate statutes taking money from the treasury in the form of permanent appropriations. In 1881 such acts called for $141,000,000 out of $278,000,000, the large proportion being due to payments for interest, which constitute a fixed charge. In 1891 permanent appropriations demanded $52,000,000 out of $292,000,000; and more recently in the appropriations for 1911–1912, permanent appropriations were estimated at $129,576,000, out of a total of $1,026,683,000. Many of the items in the regular appropriation bills, particularly those relating to salaries, might properly be considered as permanent appropriations, inasmuch as they are authorized in other statutes. It has been suggested by Professor Goodnow that "in time of conflict between Congress and the President it is very probable that the President would conduct the government and have salaries paid without annual appropriations and be able to do so successfully." While permanent appropriations give stability, they invite abuse, or tend to get out of harmony with actual needs, as they are not subjected to annual scrutiny.

The figures currently quoted under the heading of "permanent appropriations" are, moreover, misleading. They include, for example, an assumed grant for the sinking fund amounting to about $50,000,000, but this is paid only when there is a surplus, and consequently, in recent years, has not been a real appropriation. The total also includes the national bank redemption fund, which is not a true expenditure of the Government but represents simply a book-keeping transaction. Complaints, therefore, that Congress is extravagant as embodied in the term of reproach of a "billion dollar Congress" should be modified in so far as they apply to allowances for indefinite contingencies.

Practice as to New Legislation.—According to the rules of the House, no new legislation can be introduced in an appropriation bill except by unanimous consent. No appropriation can be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriation for such public works and objects, as are already in progress. It is difficult, however, to define strictly what is meant by new legislation. According to customary practice, an appropriation bill may provide for salaries to be paid for one or more clerks in a department or bureau, in addition to those authorized in the law originally establishing the service in question. Without such addition the work of the service might naturally suffer, and the need of increased grants appears obvious.

If no point of order be raised to the creation of new offices in accordance with the recommendation of the appropriation committee, the bureau receiving the appropriation may thereby extend its appropriations and administrative functions in directions not originally contemplated when the bureau was established. If, however, objection be made, there is no opportunity in the consideration of a long detailed appropriation bill to discuss the merits and defects of the service rendered by the bureau which would or would not justify the increased expenditure. The members of the House must, therefore, face the alternative of accepting the judgment of the committee as to the wisdom of developing the work of the bureau or run the risk of crippling the service without adequate information to justify their votes; so, too, with the reductions in the clerical force, or the elimination of parts of a given service already established. Strictly interpreted according to the rules a reduction, as well as an increase, is new legislation.

Disputes, therefore, arise in the passage of an appropriation bill over questions which are not really germane to a budget bill but are intimately concerned with questions of policy which more properly should be debated and decided on their independent merits. And yet, as has been repeatedly stated on the floor of the House, it would be impossible to find time for the consideration of separate bills which involve changes in the size of the administrative force or in the need of equipment which incidentally appears advantageous for the successful undertaking of public work.

As a rule, no objection is made to the insertion of new legislation of the character named in an appropriation bill, partly because its wisdom is clearly recognized, and partly because members interested in a particular item refrain from objecting to others in the hope of obtaining a smooth passage for their own items. Occasionally, however, party strife becomes bitter, and scores of items are objected to and thrown out. Only when they are restored in the bill reported back by the conference committee is there assurance that the operations of government will continue in an effective and orderly manner.

In 1906, in order to protect the legislative appropriation bill, a special rule was adopted by the House whereby objections from members were virtually denied, thus giving to the committee complete power, subject, of course, to majority vote under ordinary procedure. This practically meant the acceptance of the recommendations of the committee. Moreover, as the power of a conference committee is great, and as but little time can be given in the hurried last days of a session to the recommendations of this committee, the members of the House are again deprived at this stage of exercising a discriminating judgment.

Another defect in procedure is due to the fact that membership of the appropriation committee changes, and that, consequently, many of the members are not familiar with the needs of government. Moreover, debate on appropriation bills is not strictly limited to items of expenditure but is often wasted on questions of party dispute, simply to serve the interests of a pending political campaign.

Relation of Department Heads to Appropriations.—Although Congress is supposed to control appropriations and expenditures, loose practices have developed, whereby the executive has often gained the upper hand. Until recently appropriations, except specific permanent appropriations, have been made for a given fiscal year without limitation as to their apportionment over the entire year. As a result, in the words of Mr. Tawney, chairman of the Committee on Appropriations, (July 2, 1906): "Many of the Executive Departments proceeded on the theory that they, and not Congress, should fix the standard of public expenditure, and if the amount appropriated for the service under their jurisdiction was not in their judgment adequate, they proceeded to extend the appropriation upon the basis of their estimates, and then, at the next session of Congress, would submit deficiency estimates, which, if not allowed, would necessitate the suspension of the service." This was a policy of "coercive appropriations."

The Fifty-eighth Congress consequently enacted in one of the general appropriation bills (1905) that the heads of departments should apportion their grants by monthly allotments, so as to prevent a deficiency. The apportionment, however, could be waived by the head of the department, the reason being given in writing. This resulted in a partial reform, but department heads in some instances still freely used "for the good of the service" the privilege of waiver, and deficiencies continued. Congress thereupon enacted that the apportionment should not be waived except in case of emergency.

As it is impossible for the head of a department to be personally informed in regard to the actual needs of all branches of the service over which he has charge, he must rely in a large measure upon bureau chiefs. If a desired appropriation is cut down, either through a revision of the estimates by the head of the department or by subsequent congressional action, efforts are frequently made by the bureau chiefs to accomplish their ends by drawing upon the general or permanent fund in determining appropriations. In order to stop this and similar abuses, appropriation bills in the past few years have been drawn with more precision, and yet it is impossible for Congress to exercise a complete control. Congressmen complain that it is becoming more and more difficult to ferret out what is going on in the departments; that appropriations are diverted from one purpose to the accomplishment of another; and that officials display much ingenuity in studying appropriation acts in order to find the technical right for the diversion of funds.

Deficiency Bills.—Deficiency bills have still continued to carry large amounts, but this is largely due to new legislation not contemplated when the regular appropriations were under consideration. For example, the Deficiency Bill of the first session of the Sixtieth Congress, (1909), applying to the fiscal needs of 1908 and prior, provided for appropriations amounting to $56,996,000. This was due to legislation during the session authorizing $12,467,000 for public buildings; to $10,000,00 on account of increase in pensions, and to $12,179,000 for the Panama Canal in excess of what had originally been voted, in order to meet a more rapid construction than had originally been expected. Notwithstanding the justification of such expenditures on the ground of their independent merits, the voting of appropriations to be immediately available in-

stead of being assigned to a definite fiscal year in advance makes it impossible to measure accurately the operating expenses of government. Such defect in budgetary practice, however, is not to be ascribed to congressional extravagance or inefficiency; it is in part incident to the growth of a large and expanding nation whose needs cannot be forecasted and where fiscal ideals must be subordinated to other aims.

Lack of Harmony between the Executive and Legislative Branches.—A serious difficulty in the making of appropriations, shown by the action of the Fifty-Eighth Congress, may be cited. The appropriations were $115,000,000 in excess of the estimates submitted by the Secretary of the Treasury, and this was done notwithstanding the appeal of the executive for economy. In the case of the legislative appropriation bill of 1905, the Book of Estimates, based upon the recommendations of heads of departments, called for $30,269,753. This was $447,000 in excess of current expenditures for the services covered by the bill. The committee reduced these estimates to $29,134,181, or $688,000 less than current cost. The bill provided for salaries of 14,406 officials; the departments asked for an increase of 171; the committee cut down the total number by 232, making a reduction in the existing force of 61. Under such conditions members of the House are at sea as to whose recommendations to follow. The heads of departments are concerned with what they believe to be the good of the service, while the committee is more specifically concerned with the budget.

The department heads may make recommendations in the interest of economy, but Congress is little disposed to pay heed to executive suggestions. Repeatedly the Secretary of the Treasury has recommended the abolition or consolidation of certain customs districts, the existence of which have at present no fiscal justification, but members of Congress from the state affected by the proposed changes have successfully defeated any reduction in patronage. The same difficulty has been met in attempts to secure improved mechanical processes in the work of certain bureaus, as in the Bureau of Engraving and in the office of the public printer.

The Senate.—In the Senate responsibility is more concentrated. In 1867 all appropriation bills except the river and harbor bill were taken from the committee on finance and assigned to a new committee on appropriations. In order, however, to secure harmony of legislation between this committee and committees which deal with general legislation, each of the thirteen most important committees has a representative on the committee of appropriations.

Although the Senate does not exercise the privilege of originating appropriation bills, it exercises through the power of amendment an important influence in determining grants. As a rule it increases appropriations. The privilege of unlimited debate enables a Senator to insert in the appropriation bill some item in which he has a special interest. The unwritten rule of senatorial courtesy also tends to prevent close scrutiny of special items in which individual members are interested.

The President.—Although the President can veto an appropriation bill, he is practically powerless to reduce it. If the privilege were exercised, except in the case of a river and harbor bill, a part of the machinery of government might stop, for the President cannot veto separate items, but must treat the bill as a whole. Even if the President is opposed to appropriations of a certain character, as, for example, for rivers and harbors, such grants may be attached to the sundry civil bill, which generally is not passed until the closing days of the session. President Hayes, however, vetoed several bills because they included riders on the use of troops in the South and compelled Congress to yield (*see* PRESIDENT, AUTHORITY AND INFLUENCE OF).

Comptroller of the Treasury.—An appropriation is not finally secure until the warrant for its payment from the Treasury has been passed upon by the Comptroller of the Treasury (*see*). This official has the power to determine whether an appropriation is expressly authorized by Congress, and while the general policy of his office is to carry out the will of Congress, appropriations presumably sanctioned are sometimes denied payment on account of technical objections raised by this official.

Contracts for the Future.—An appropriation bill may not only carry with it a specific and definite appropriation for a given year, but authorize the making of contracts which will entail expenditures in future years. This is particularly true of appropriations for the construction of public works and the improvement of rivers and harbors. For example, the River and Harbor bill, which was vetoed by President Cleveland in 1896, provided for the immediate expenditure of $14,900,000, and authorized contracts which ultimately would demand $62,000,000. Although these future amounts may be specified, and apparently restricted, the new works thus contemplated are often but the beginning of a series of new demands, the ultimate cost of which cannot be foreseen; nor when they are once inaugurated can they well be abandoned without loss. Many of these undertakings may be wise; many on the other hand are the result of vicious logrolling on the part of members who care little for future consequences provided some immediate expenditure can be obtained for their own districts. In this way a future Congress, though desiring to effect economy, is blocked by the ill-advised legislation of its predecessor.

Another factor tending to swell appropriations is the custom by which the appropria-

tions of one year are made the standard with which the appropriations of the next year are compared. The Fifty-first Congress, which was Republican, appropriated $988,000,000. The Democrats taunted it with being a billion dollar Congress, and yet the Democratic House of the Fifty-second Congress, accepting the high level already established, voted appropriations amounting to $1,026,000,000.

State Practice.—In all but eleven states there is a general appropriation bill, but this does not include all the appropriations. New York has three appropriation bills: the general appropriation bill, including only absolutely necessary expenses; the supply bill, covering deficiencies and unforeseen expenditures, and the supply bill supplementary, embracing what has been omitted, coming at the end of the session. In Massachusetts appropriations are made by a large number of separate bills. In some states governors may veto items in appropriation bills; and they use the power vigorously (*see* VETO POWER). As a rule, ordinary appropriations made by state governments expire at the end of the fiscal period for which voted, and the balance reverts to the treasury. In some states they run for one year in addition to the year for which they were made.

In Massachusetts and Rhode Island officers or boards may continue their several departments for a period of two months after the close of the fiscal year at the rate of expenditure authorized by appropriations in the preceding years. In some states the officials are authorized under a general statute to borrow money to meet deficiencies; such amount, however, is generally limited, as well as the rate of interest which may be paid. The constitutions of 32 states limit the amount of indebtedness for deficiencies of revenue or they limit the amount to a certain proportion of the assessed valuation of property. In Massachusetts no officer can make purchases or incur liabilities for a larger amount than has been appropriated, and the commonwealth cannot be held responsible for an excess. In some states the officer creating a deficiency is held to be personally liable.

Municipal Practice.—Two different systems are followed by cities in making appropriations. The bills may be prepared by a city council or board of aldermen; or by a board of estimate, composed of certain executive officials. The latter method has been used in New York and a few other large cities, but is not generally favored as it takes power away from the city council. Where it prevails, more than a majority is necessary to change the estimate; or the council may be refused the right to increase estimates, though permitted to reduce them. Generally, mayors have the right to veto separate items. On the whole the method of preparing bills is as crude as in federal practice, and is responsible for much of the ill-advised financial legislation which has involved cities in heavy indebtedness.

See BOARDS OF ESTIMATE; BUDGETS, FEDERAL; BUDGETS, STATE AND LOCAL; CONGRESS; CONTINUING APPROPRIATIONS; COST OF GOVERNMENT IN U. S.; EXPENDITURES, FEDERAL; EXPENDITURES, STATE AND LOCAL; FINANCIAL STATISTICS; PURCHASE OF PUBLIC SUPPLIES AND PROPERTY; STATE LEGISLATURES; SURPLUS REVENUE.

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DAVIS R. DEWEY.

AQUEDUCTS. Aqueducts are artificial channels to convey water from one point to another. They are usually constructed with such a slope or fall that the water will flow to its destination by gravity. They may consist of open channels or canals excavated along the surface of the ground, or of tunnels carried under hills and mountains, or of bridges spanning streams or depressions in the land. A single aqueduct may combine all of these forms of construction.

Aqueducts were among the earliest great engineering works, and probably date back beyond the beginning of written history. The Roman aqueducts were wonderful engineering structures, as their ruins still attest. Fine examples of early and modern aqueducts are found in many European countries. The earliest important aqueduct constructed on the western continent seems to have been that built by the Spaniards in the latter part of the seventeenth century to supply the city of Mexico with water.

Many more recent examples exist. Two gigantic projects of this kind are now (1913) approaching completion. One is designed to carry a new supply of water to the city of New York from the Catskill mountains. Its total length to the city boundary will be 92 miles and it will have a maximum capacity to deliver 600 million gallons daily. A notable feature of this aqueduct is the crossing of the Hudson river at Storm King, about four miles above West Point. Here a pressure tunnel 3022 feet long and 1100 feet below the river surface, with vertical shafts at each end, is be-

ing constructed. The great depth was necessary in order to locate the tunnel through its length in solid rock.

Another great aqueduct is being constructed to supply the city of Los Angeles with pure water from the Owens River in the Sierra Nevada mountains. Its length is about 214 miles, more than 43 miles of which is tunnel and over 12 miles is in steel pressure syphons under streams and mountain depressions. It is designed to deliver nearly 260 million gallons per day and the estimated cost is nearly $25,000,000. Since the intake at Owens River is 3,820 feet above sea level the great fall will be utilized for developing water power for transmission by electricity to the city of Los Angeles and to power users along the route of the aqueduct.

Aqueducts are usually constructed in connection with water-supply, water-power, or irrigation projects, of which they are considered and treated as a part both as to their construction and financing. When on a large scale and for municipal supply, such as the two named, their construction is usually under the direction of special commissions which are practically independent of the ordinary municipal government.

See CONTRACT SYSTEM OF PUBLIC WORKS; PUBLIC WORKS; WATER SUPPLY.

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ARBITRARY GOVERNMENT.—Arbitrary government disregards the supremacy of law and established custom and depends upon discretion; opposed to free government. See ABSOLUTISM. K. F. G.

ARBITRATION AND PEACE

Arbitration, Mediation and Mixed Commissions.—Arbitration, as understood in international law, has for its object, in the words of the First Hague Conference, "the settlement of differences between states by judges of their own choice, and on the basis of respect for law." Arbitration is thus distinct from both mediation on the one hand and from the decisions of mixed commissions on the other. Mediation is an act of interposition, whether undertaken spontaneously or at the request of one of the parties, by which the mediator endeavors to reconcile opposing claims and to appease the feeling of resentment which may have arisen between the contending parties. It is advisory in character, and has no binding force upon the parties; whereas arbitration results in a decision which the parties obligate themselves to accept. The decisions of mixed commissions, which are composed of members appointed in equal number by both parties, may in principle be strictly arbitral in character, but in practice they are rarely so. The functions of such commissions are more frequently administrative rather than judicial. They often give expression to a compromise rather than to a decision on the merits of the case. This is due to the fact that the members appointed by either party are prone to take the part of advocates rather than of legal judges. Usually the parties make provision for an umpire or for the elimination by lot of one of the members of the commission, so that a majority vote may be had; and when this is done the decision reached will be arbitral in character.

Essential Elements in Arbitration.—The three essential elements in arbitration are: (1) The judges of the dispute in question must be freely chosen by the parties. Arbitration thus differs from a judicial settlement in which the judges are imposed upon the parties by a higher power, as is the case in the administration of municipal justice; the distinction equally holds good even when the judges are self-imposed by a number of states, for the fact that a state has one vote out of, for example, fifteen, in the appointment of the judges will not give the tribunal the character of a court freely chosen by the parties to the dispute. The so-called Court of Arbitral Justice, adopted in the form of a *vœu* by the Second Hague Conference, is not strictly an arbitral court, since, whatever method of appointing the judges is finally agreed upon, it is intended that the court be a truly permanent one, and in consequence it will be to that extent imposed upon the parties.

(2) The arbitrator must be a person chosen to decide the dispute in question. A judge or body of judges who have been, at a prior time, freely chosen by the parties for the settlement of future differences, in an unusual case, may be no longer agreeable to one or other of the parties when the dispute actually arises.

(3) The parties must have obligated themselves to accept the decision of the arbitrator. The sanction attending the decision is thus a moral one and rests upon the rule of good faith between nations.

Law in Arbitration.—It does not seem to be essential to arbitration that the basis of the decision be strictly legal. The expression "on the basis of respect for law" does not mean that the parties may not invest the arbitrator

with a certain amount of discretion which leads to compromise. The extent of this discretion will depend upon the nature of the case to be decided. If the dispute is capable of being definitely settled by the application of legal principles, the parties will naturally provide for a strictly legal decision; otherwise they may empower the arbitrator to decide *ex aequo et bono*, that is to say, they may give him authority to render a decision based on legal principles as far as they apply, and on abstract justice where the law fails. It is important that the parties know in advance precisely what character of decision they are to get, and accordingly the special agreement (*compromis*) by which the dispute is referred to arbitration, generally sets forth the precise powers of the arbitrator. In its practical application, arbitration is generally resorted to only when the simpler and more expeditious methods of direct negotiation have failed to settle the dispute. It is not an end in itself, it is a means to an end; it stands between the breakdown of diplomacy and the possible resort to war.

Early History of Arbitration.—International arbitration has an ancient and honorable history. From the beginning of separate and independent states which recognized a principle of legal equality among them, cases of arbitration are found, especially between the city-states of Greece, as in the settlement of a territorial dispute between Samos and Priene before the Christian era. There are several well authenticated instances of treaties providing for the arbitration of future disputes. An example is the Treaty of Alliance concluded in 418 B. C., between Argos and Sparta. The Roman policy of world domination was unfavorable to arbitration. Rome was, however, ready to act as mediator between foreign states, and frequently appointed arbitrators for contending provinces, whether at the request of the latter or upon her own initiative. In the middle ages notwithstanding the claim of the Holy Roman Empire to preëminence, there are instances in which the emperor was chosen arbitrator, and not a few cases in which the pope acted in that character or as a mediator. During the religious and territorial wars of the sixteenth and seventeenth centuries, and political readjustment of the eighteenth century, arbitration practically ceased to exist.

Nineteenth Century Arbitration.—At the close of the eighteenth century there came from the American continent an impulse which revived the practice of arbitration and during the nineteenth century brought it into general favor as the rational method of settling disputes between nations. This new era begins with the Jay Treaty (*see*) of November 19, 1794, between Great Britain and the United States. The treaty provided for future commerce and also for an adjustment of boundaries and of reciprocal claims by three arbitrations. Awards were rendered on all three points, and a standing example was thus given of the effectiveness of arbitration as an instrument for the peaceful settlement of disputes. The example of Great Britain and the United States was followed by other nations, with the result that more than two hundred arbitrations have been held since the conclusion of the Jay Treaty. A famous instance is the agreement of Great Britain and the United States to arbitrate the so-called *Alabama* claims (*see*), which threatened to involve the two countries in war, and which were settled peaceably by arbitration at Geneva (*see*) under date of September 14, 1872. The cause of arbitration may be said to have triumphed definitely at the First Hague Conference (1899) where twenty-six nations established an international court of arbitration and drew up a code of arbitral procedure.

Anticipatory Agreements.—Of recent years not only have nations provided by special agreements for the settlement by arbitration of existing disputes, but they have entered into general treaties providing for the arbitration of possible future disputes. As a general rule these agreements are limited in their operation to disputes of a legal nature and disputes concerning the interpretation and application of treaties. It is usual to make formal exception of questions involving the independence, honor, or vital interests of the contracting parties, as such questions are thought to be more properly the subject of diplomatic negotiation in the present stage of international relations. Since 1907 no less than one hundred and sixty of these general treaties of arbitration have been concluded, and Secretary Root in the last year of his office (1908) negotiated no less than twenty-five of them, all of which were ratified by the Senate.

An endeavor was made at the First Hague Conference (1899) to frame a general treaty of arbitration to which all the signatory states should be parties, but without result; and again at the Second Hague Conference (1907) a similar endeavor was unsuccessful, although the latter Conference was unanimous: (1) in admitting the principle of compulsory arbitration; (2) in declaring that certain disputes, in particular those relating to the interpretation and application of the provisions of international agreement, may be submitted to compulsory arbitration without any restriction. The habit of resorting to arbitration is gradually being formed, the scope of arbitration is gradually becoming more enlarged; and the successful settlement of each new case is creating a growing sentiment of the benefits, both material and moral, attending the settlement of international disputes by arbitration.

History of Peace.—Apart from the fact that arbitration has been a potent factor in ren-

dering peace between nations more permanent and secure, international peace as the ideal relation of states has a distinct history of its own. In the ancient world the ideal of peace, where it existed at all, generally rested upon the assumption of the supremacy of the individual nation, or its triumph over its enemies, or at least its complete isolation from other states. Such an ideal could have no truly international character. However, within the limited Hellenic circle peace was regarded as the normal political condition, although the struggles to maintain a balance of power among them constantly involved the city-states in war. In the early days of the Christian era, when the peace of the world was conditioned by submission to the Roman Empire, the high-minded and philosophic churchman, St. Augustine, boldly declared against war. In the sixteenth century the theologian and humanist, Erasmus, in a tractate entitled *Dulce bellum inexpertis* raised his voice against the attempted justification of war as a defense of right. Within modern times the protests against war as a means of settling disputes between nations have been more frequent and insistent. The philosopher Hume states the case in a single phrase: "The rage and violence of public war—what is it but the suspension of justice among the warring parties?" Benjamin Franklin is equally positive in his attitude, and in recent years the protest finds expression in all parts of the civilized world.

Peace Movement.—Side by side with the clear recognition of war as an evil and the denunciation of it as unjust and irrational, certain plans have been put forward by the advocates of peace as practical means for the abolition of war. In 1306, Pierre Dubois proposed to introduce universal peace by means of a Congress of States at Toulouse and a Court of International Arbitration. Sully, Minister of Henry IV of France, formed a project for the establishment of a diplomatic union as a means for the attainment of universal peace. In 1623, Emeric Crucé, in a small book entitled *Le Nouveau Cynée*, proposed that the ambassadors of all sovereigns should permanently reside at Venice and there constitute a court for the settlement of international disputes. More detailed projects were those of William Penn in 1692, of Abbé St. Pierre in 1713, of Rousseau in 1763, and of the American, William Ladd, in 1840. In 1815 the New York Peace Society, the first of its kind, was organized. Later, in the same year, the Massachusetts Peace Society was formed, and in the following year the English Peace Society was organized. In 1828, the American Peace Society was founded by William Ladd. Since that time numerous peace societies have been organized in the United States and in foreign countries. The National Peace Council, a union of British peace societies, the Interparliamentary Union (*see*), the International Peace Bureau of Berne, and the publication *Die Friedenswarte* may be singled out for special mention.

See ARBITRATIONS, AMERICAN; BOUNDARIES OF THE U. S., HISTORY OF; CLAIMS, INTERNATIONAL; COMMERCE, INTERNATIONAL; DISARMAMENT; HAGUE CONFERENCES; HAGUE TRIBUNAL; INTERNATIONAL CONFERENCES; INTERNATIONAL LAW, INFLUENCE OF THE UNITED STATES ON; INTERNATIONAL UNIONS; PEACE, CONCLUSION OF; WAR, INTERNATIONAL RELATIONS.

References: T. Baty, *International Law* (1909), 1–23; J. B. Moore, *International Arbitrations* (1898), V, 4821–4851; W. E. Darby, *International Tribunals* (1900); H. Doniol, *Histoire de la Participation de la France à l'Etablissement des Etats-Unis d'Amérique* (1886–92); H. N. Chittenden, *War or Peace* (1911); *Am. Year Book, 1910*, 100–110, and year by year; J. B. Scott, "The Work of the Second Hague Peace Conference," and "The Central American Peace Conference of 1907" in *Am. Journal of Int. Law*, II (1908), 1–28, 121–143, "The Proposed Court of Arbitral Justice," *ibid*, 772–810; L. Anderson, "The Peace Conference of Central America," *ibid*, 144–151.

JAMES BROWN SCOTT.

ARBITRATION, COMPULSORY. A system by which the parties to a labor dispute may give an asking for an official investigation and decision. The finding is then unavoidably binding upon them. See ARBITRATION OF LABOR DISPUTES. C. F. G.

ARBITRATION OF LABOR DISPUTES

Private Agreement.—Occasionally disputes between laborers and employers are settled by creating a board by mutual agreement, both sides agreeing in advance to accept the award. In some contracts between boards of workmen and the employers, claims for such settlements are inserted.

Extra-Legal Governmental Arbitration.—Workmen or labor unions occasionally appeal to mayors or governors to put pressure on the employers. When the anthracite miners were on an obstinate strike (October, 1902), President Roosevelt took the matter up and secured an agreement to have the question at issue submitted to a board of men whom he designated; and they made an agreement pending which the strike was suspended; and the finding was accepted by both parties.

State Boards of Arbitration.—Laws have been enacted in more than one-half of the

states favoring the peaceful settlement of labor disputes in lieu of resort to strikes and lockouts, by providing for the formation of boards or tribunals to inquire into such disputes, to endeavor to bring the parties by conciliation to a peaceful settlement, and to render authoritative decisions on matters which the parties might agree to submit to such arbitration. The states of New York and Massachusetts were the first to establish permanent boards of arbitration.

The methods of constituting the state boards vary, though their members, usually appointed by the governor, represent both employers and employed. Disputants may by mutual consent refer disputes to the board for arbitration; or the board may on its own initiative intervene for the purpose of conciliating the parties. The acceptance of arbitration is in all cases voluntary. None of the statutes provides for actual compulsory arbitration and the acceptance of awards. When the disputants will not agree to submit the controversy to the board, the latter may in most states investigate the dispute on its own initiative and publish a report of the investigation, stating the cause and assigning blame and responsibility.

The costs of hearing before these boards are usually met by the state, though in some states the parties having recourse to the boards are charged with the costs, their apportionment being a part of the award which it is the duty of the board to make.

Federal Board of Arbitration.—The Federal statute, popularly known as the Erdman Act (June 1, 1898) relates only to common carriers engaged in interstate commerce, and provides for a commission consisting of a member of the Interstate Commerce Commission or of the Court of Commerce, designated for this duty by the President, and the Commissioner of Labor. This commission is to exercise its functions as a mediator on the request of either party to a controversy. If mediation and conciliation fail to lead to an amicable settlement of the difficulty, the commission is to endeavor at once to bring about an arbitration of the controversy by a board of three members, one named by the company, one by the labor organization representing the employees affected, and the third by the two thus selected.

Canadian System.—No system devised in any state or foreign country for the peaceful settlement of labor disputes can be compared in effectiveness to the Canadian Industrial Disputes Investigation Acts of 1907, enacted on the recommendation of Deputy Minister of Labor, W. L. Mackenzie King, following a prolonged strike of coal miners which caused a coal famine throughout Saskatchewan and Alberta. Briefly, it prohibits any strike or lockout in any industry affecting a public utility until an investigation has been made; and allows a period of 30 days in which to make such an investigation. After the investigation has been completed by an official board created for that particular case, and the result of its findings are made public, the employer or the union is free to engage in a strike or lockout if desired. The board does everything possible to effect an amicable settlement while conducting an investigation; and its official report is in the nature of recommendations to one or the other of the parties, or both. These recommendations have generally been accepted without recourse to a strike. Where they have not been, and a strike has been called, the same recommendations have sometimes been accepted later to settle the strike.

Need of Information.—Public opinion in this country and abroad appears to be tending toward publicity in the matter of labor disputes. The present situation demands that there should be written into the public records of our national industrial life definite information, commonly called statistics, showing the loss of industrial energy caused by strikes and lockouts, together with the causes, methods of termination, etc., collected and compiled by uniform methods, supplemented by a coöperation between separate state boards in the collection of information interstate in character.

Compulsory Arbitration.—Arbitration is compulsory when the government compels the interested parties to submit the case to a board and to abide by its findings. The system exists in New Zealand, New South Wales, and Western Australia. Following a disastrous series of strikes which paralyzed the industries of the country, the New Zealand law was enacted in 1891, on the theory that where the public interests are affected, neither an employer nor an employee is absolutely a free agent; and that personal liberty ceases to be liberty when it interferes with the general well-being of society.

Compulsory arbitration is opposed in this country as unworkable and unconstitutional, although the latter objection might possibly be overcome in public service industries upon whose continuous operation the public welfare intimately depends, in the same manner that the legislature regulates railway rates, elevator charges, and the price of bread. If these services and commodities are essential to the public welfare, it may be that the continuous operation of these industries is also necessary to protect the public.

New Zealand is divided into eight industrial districts, for each of which there is a board of conciliation. For the whole colony there is a final court of arbitration appointed by the governor, one member nominated by the registered labor unions, one by the registered employers' unions, and the president from justices of the supreme court. Employees desiring to bring a dispute before the board must form an industrial union (of not less than seven members) and register under the

act. Awards by the board of conciliation are compulsory unless appeal is taken within one month to the court of arbitration. The jurisdiction of the court covers every sort of a dispute (not involving a crime) which may arise between employees and employers, and within that sphere the court is absolute.

See BOYCOTTS; LABOR CONTRACTS; LABOR, FREEDOM OF; LABOR ORGANIZATIONS; LABOR, RELATION OF, TO THE STATE; LIBERTY, LEGAL SIGNIFICANCE OF; RIGHT TO LABOR; STRIKES AND BOYCOTTS; UNEMPLOYMENT; WAGES, REGULATION OF.

References: L. D. Clark, *Law of the Employment of Labor* (1911), 331–340; F. T. Carlton, *Hist. and Problems of Organized Labor* (1911), 228–261; L. W. Hatch, "Government Industrial Arbitration" in U. S. Bureau of Labor, *Bulletin No. 60* (Sept., 1905); "Canadian Industrial Disputes" in *ibid, No. 76* (May, 1908), *No. 86* (Jan., 1910), *No. 98* (Jan., 1912); C. P. Neill, "Mediation and Arbitration of Railway Labor Disputes in the United States" in *ibid, No. 98* (Jan., 1912); C. H. Winslow, "Conciliation, Arbitration and Sanitation in the Cloak, Suit and Skirt Industry in N. Y. City" in *ibid;* H. L. Sumner, "Industrial Courts in France, Germany and Switzerland" in *ibid;* G. L. Bolen, *Getting a Living* (1903), ch. xxvii; "The Settlement of Labor Disputes" in Am. Acad. of Pol. and Soc. Sci. *Annals*, V. 36, No. 2 (Sept., 1910); N. P. Gilman, *Methods of Industrial Peace* (1904); U. S. Industrial Commission, *Report* (1901), XVII, XIX; S. Webb, *Industrial Democracy* (1902), 222–246; bibliography in Library of Congress, *List of References on Labor in Relation to Strikes and Lockouts* (1903), and *Industrial Arbitration, Bibliography* (1903).

C. F. GETTEMY.

ARBITRATIONS, AMERICAN. The United States, for more than a century, has been conspicuous in practical efforts for arbitration of international disputes. The Jay Treaty (*see*) with Great Britain (1794) inaugurated the policy; the Treaty of Ghent (1814) continued it; and from that period to the present, conventions and agreements, formal and informal, for the settlement of international differences have been negotiated by the United States with many nations.

The most important American arbitrations since the Jay Treaty have been those with Great Britain, especially the following:

Northeastern Boundary.—This involved an interpretation of the Treaty of 1783, as to the boundary from the source of the River St. Croix to the St. Lawrence, and was arbitrated by the King of the Netherlands in 1828. The award being unacceptable to the United States, a compromise was reached in the Ashburton Treaty (*see*) of 1842.

The Alabama Claims.—These arose out of acts committed by the Confederate privateer *Alabama* and other vessels equipped or armed in British ports during the Civil War. The Treaty of Washington in 1871 provided for a commission of arbitration which met at Geneva (*see* GENEVA ARBITRATION) in 1872, and awarded the United States $15,000,000.

San Juan Water Boundary.—Through the channel between Vancouver Island and the mainland, a boundary line, long a source of controversy, was arbitrated by the German Emperor in 1872 in favor of the claims of the United States.

Halifax Fisheries Commission.—This controversy was over the amount of compensation which should be paid by the United States for the superior privileges in North Atlantic coast waters granted by the treaty of Washington. Under Articles 22–25 the question was referred to a commission consisting of a national of each party and an umpire. An award of $5,500,000 was made in favor of the claims of Great Britain on November 23, 1877, at Halifax.

Fur Seal Controversy.—The United States from 1887, asserted jurisdiction over Bering Sea and the right to regulate the fur seal fisheries (*see*) therein. Great Britain disputed both claims. By convention of February 29, 1892, the controversy was referred to arbitration. The award rendered at Paris August 15, 1893, denied jurisdiction but admitted necessity for regulation.

Alaskan Boundary.—(Not strictly an arbitration) The boundary line between Alaska and Canada, became a serious subject of controversy between the United States and Great Britain. Under the convention of January 24, 1903, the question was referred to a mixed commission which rendered an award October 20, 1903, largely in favor of the United States, the British chairman voting with the American members.

North Atlantic Coast Fisheries.—The question of the rights and privileges of Americans in these fisheries, involved an interpretation of the Treaty of 1818. Under special agreement of January 27, 1909, the controversy was referred to the Permanent Court at The Hague. The award, rendered September 7, 1910, was in its practical effects, equally favorable to both parties.

A review of the diplomatic correspondence of the United States during the last one hundred years and a consideration of the great number of agreements, which have been entered into by the United States during that period for the purpose of adjusting by arbitration controversies with other governments, conclusively establish its preëminence among the nations of the world in the advocacy of the settlement of international disputes by arbitral tribunals.

See ALASKA BOUNDARY CONTROVERSY; ALABAMA CONTROVERSY; ARBITRATION AND PEACE; BOUNDARIES OF THE U. S.; BRITISH

North America, Diplomatic Relations with; Central America, Diplomatic Relations with; Claims, International; Drago Doctrine; Foreign Policy of the U. S.; Geneva Arbitration; International Law, Influence of the U. S. on; Newfoundland Fisheries Dispute; Political Power; Pan-American Congress; San Juan Arbitrations; Seal Fisheries; States, Equality of; and arbitrations and diplomatic relations with countries, by name.

References: J. B. Moore *Int. Arbitrations* (1898); W. M. Malloy, *Treaties and Conventions* (1909), 152, 414, 787, 835, 873, 936, 1194, 1290, 1532, 1568, 1589, 1870, 1872, 1881; G. W. Featherstone, *Observations on the Treaty of Washington* (1873); Department of State *Treaty Series*, especially since 1909.

James Brown Scott.

ARBOR DAY. An annual legal or school holiday in most of the states. The date usually falls in April or May in the northern states, and in December, January, or February in the southern states. Annual planting of trees under state sanction is said to have been first suggested in 1865 by B. G. Northup, secretary of the Connecticut Board of Education; first successfully inaugurated in Nebraska in 1872 by J. Sterling Morton of the state Board of Agriculture; officially sanctioned by Governor Furnas in 1874 and legalized by the legislature in 1885. See Forestry, Public Education in; Forest Service; Holidays, Public. Reference: R. H. Schauffler, Ed., *Arbor Day* (1909). O. C. H.

ARCHIVES, FEDERAL. This term is employed to designate, in their entirety, the records, files, correspondence, accounts, and other documents produced in the transaction of official business by the various branches, departments, bureaus, and offices of the Federal Government. Strictly defined, the Federal archives are the records of the National Government since its inauguration in 1789. It is customary, however, to include the records of the Confederation, 1774–1789, of a national character, the records of acquired territory, so far as they are in the possession of the National Government, and the archives of the Confederate States of America, captured or otherwise acquired, in the general designation of federal archives.

The archives of the United States, unlike those of most other countries, are not centralized nor administered as a general archive. Their status is rather that of business records and they are scattered among the hundreds of bureaus, offices, divisions, etc., in which they have originated or which have inherited or otherwise received them. The older records, that are not in frequent use in the transaction of current business, are as a rule stored wherever space can be found for them, and, in many cases have suffered from neglect or are in danger of serious damage, even of complete destruction, from fire or damp. There are no general regulations applying to the archives as a whole, with the exception of laws fixing penalties for theft or vandalism and providing for the destruction of papers regarded as useless for administrative or historical purposes. Access to the records of any department for historical purposes is obtained by special permission from the head of the department. Only improvised accommodations are as yet provided for students and in many offices the archives are difficult or impossible of access by reason of their location. For over twenty-five years efforts have been made to secure legislation providing for the erection in Washington of an archive depot and for the centralization of the federal archives. All that has been accomplished thus far has been to secure a provision in the Public Buildings Act of March 4, 1913, for the preparation of plans for an archive building of adequate dimensions and for the acquisition of a site therefor. Small groups of archives of especial historical interest have already been placed in the custody of the Library of Congress.

The archives of the Department of State include the diplomatic and consular correspondence from 1789 to date, the treaties with foreign powers and with the Indian tribes, the records of the Constitutional Convention and of constitutional amendments, the original laws, the greater part of the papers relating to the territories prior to 1873, and the records of international claims commissions. The archives of the Department of War, for the most part centralized in the office of the adjutant-general, and, until the orders of March 26, 1912, quite inaccessible for purposes of historical research, include a considerable number of Revolutionary records —mainly muster-rolls and order books—and, since 1800, the nearly complete records of the Army and the department, as well as the greater part of the archives of the Confederate Government. The archives of the Navy Department are practically complete since 1798. In the Treasury Department the archives of greatest interest are those of the Secretary's office, which consist largely of correspondence. They are complete only since the fire of March, 1833. Other archives of especial historical value are those of the General Land Office, of the Indian Office, of the Census Bureau, where the original census schedules are preserved, of the office of the Postmaster-General, of the Senate and House of Representatives, and of the Supreme Court and the Court of Claims. In the division of manuscripts of the Library of Congress are deposited the Continental Congress papers, 1774–1789, parts of the archives of the Confederate state and post-office departments, the Spanish archives of Florida, New

THE WORLD, SHOWING THE COMPARATIVE AREA OF THE UNITED STATES

Mexico, Porto Rico, and Guam, and the collections of papers of many important persons.

See Publications, Governmental.

References: C. H. VanTyne and W. G. Leland, *Guide to the Archives of the Government of the United States in Washington* (2d. ed., 1907); "History of the Movement for a National Archive Building in Washington" *Senate Document 297*, 62 Cong., 2 Sess. (1912); W. G. Leland, "The National Archives: a Programme," in *Am. Hist. Rev.*, Oct., 1912.

W. G. Leland.

AREA OF THE UNITED STATES. The question, what constitutes the area of a country, is by no means the simple one that it is commonly supposed to be, especially if the country possesses a sea or lake coast. In such case, should the coast line be followed strictly, and when should one begin to jump across bays and estuaries? In the United States, should, for instance, Long Island Sound, Delaware and Chesapeake bays, and Albemarle and Pamlico sounds be included or excluded?

Then follows the process of measurement. As the boundaries of the continental United States have been mapped every where with care and accuracy, its area is known within very small limits of error—more closely, doubtless, than the areas of many of its component states. The Coast and Geodetic Survey has charted its coast and the Lake Survey the shores of the Great Lakes, and the St. Lawrence River; and various boundary surveys have located and mapped the boundaries with Canada and Mexico.

For purposes of measurement, continental United States is composed of many complete square degrees, making up the whole interior of the country and of a smaller number of incomplete, or partial square degrees, around its borders. A square degree is an area of one degree of latitude by one degree of longitude. Tables showing the number of square miles in such quadrilaterals in all latitudes, have been prepared, so that, so far as complete square degrees are concerned, the area is a very simple matter.

Not only can the complete square degrees thus be treated, but also parts of them such as quarters, whose dimensions are 30′ by 30′ and sixteenths, whose dimensions are 15′ by 15′. In this way nearly all the area of the country is obtained easily, and with the greatest accuracy.

The partial quadrangles, those which are traversed by the coast line or boundary line, require much more labor. Upon a chart or map showing with all possible accuracy such line, that portion of the square degree or of a subdivision of it, which lies within the country, is measured by means of a planimeter. With this instrument, by following around the periphery of an area on the map, with a steel point, the area is summed up. As a check, the part of the quadrangle outside of the country is also measured, and the two parts should add up to the tabular area of the quadrangle.

This measurement is necessarily done all around the country, except that part of the northern boundary between the Lake of the Woods and Puget Sound, which is on the 49th parallel.

By the method above outlined, the area of continental United States has been obtained, and is 3,026,789 square miles. This is what is known as the total or gross area, and it includes many, and some quite large, bodies of water. It excludes Long Island Sound, but on the other hand, it includes Delaware and Chesapeake bays, Albermarle and Pamlico sounds, San Francisco Bay, Puget Sound, and many smaller arms of the sea. It includes Great Salt Lake and thousands of smaller lakes and ponds. It includes much river surface. So far as possible, these water bodies have been measured by planimeter, and a sum total of included water surface of 52,630 square miles obtained, leaving as the land surface of continental United States 2,974,159 square miles.

Using similar methods, the areas of Alaska and other detached possessions, have been obtained with the following results:

Continental United States	3,026,789
Alaska	590,884
Guam	210
Hawaii	6,449
Panama Canal Zone	474
Philippine Islands	115,026
Porto Rico	3,435
Tuituila Group—Samoa	77
	3,743,344

It must be understood, however, that the areas of these non-contiguous regions are by no means as accurately known as that of continental United States, since their limits have not as yet been as accurately surveyed and charted.

Upon the conclusion of peace with Great Britain at the close of the Revolution, the United States started with a territory extending westward to the Mississippi, and southward to the 31st parallel, comprising an area of 843,799 square miles, or little more than one-fourth the present area of continental United States.

In 1803 the great area of Louisiana, with 890,921 square miles, extending from the Mississippi to the summit of the Rocky Mountains, was purchased from France, more than doubling the area, and making the total 1,734,720. In 1819, in order to end a quarrel over land titles, the Floridas were purchased from Spain, adding 58,680 square miles to the area. Texas, which shook herself free from Mexico in 1836, was admitted to the Union in 1845, bringing with her 389,610 square miles. In 1842 the Webster-Ashburton treaty with Great

Britain, extended the northern boundary on the 49th parallel to Puget Sound, thus establishing our claim to the Oregon Country. This added 285,123 square miles.

The war with Mexico resulted, in 1847, in the cession by her of 526,445 square miles in the Southwest, and in 1853, in order to quiet a land dispute, the United States effected the Gadsden purchase amounting to 31,017 square miles.

This addition completed the present area of continental United States.

See BOUNDARIES OF THE U. S.; CESSIONS BY STATES TO THE FEDERAL GOVERNMENT; DEPENDENCIES OF THE U. S.; FRONTIER IN AMERICAN DEVELOPMENT; INDIAN RESERVATIONS; PUBLIC LANDS AND PUBLIC LAND POLICY; TERRITORY, ACQUIRED, STATUS OF.

References: U. S. Geological Survey, *Bulletin* (1906), No. 302; U. S. Dept. of the Interior, General Land Office, *Annual Reports*.

HENRY GANNETT.

ARGENTINA. The Argentine Republic, *La Nación Argentina* is the official name, second largest in South America, was discovered in 1508. For a time it was part of Peru, but became a separate viceroyalty in 1776. In 1810 independence from Spain was declared. Argentina has an area of 1,139,979 square miles, equal to about two-thirds of the United States, and a population of 7,080,000 (estimated, 1912) over six per square mile. The present constitution was adopted in 1853, and makes of the nation a federal state, composed of fourteen provinces, ten territories and a federal district. It provides for three branches of government, legislative, executive and judicial. Legislation is vested in the national congress, consisting of a senate and a chamber of deputies, the former with thirty members, two for each 'province' and the federal district, elected by a special body of electors for a term of nine years, renewed by thirds every three years. Deputies are elected by direct popular vote for a term of four years in proportion of one for every 33,000 inhabitants, the chamber being renewed by halves each two years. The president and vice-president are elected indirectly, as in the United States, by electors chosen by the people, and for a term of six years, neither being eligible for a second term immediately following. The cabinet is composed of eight ministers: of the interior; of foreign affairs; of finance; of justice and public instruction; of public works; of agriculture; of war; of marine. The federal judiciary is composed of a supreme court of five judges and courts of appeal of three judges, appointed by the president. The army is made up of 20,000 regulars and a reserve force of 150,000. Military service is compulsory. naval and military academies are maintained by the government. The navy aggregates thirty vessels of modern type, and recently the government has ordered an increase to the force of others of the dreadnaught class. About 6,000 officers and men compose the strength of the navy, with a reserve of 25,000. In educational matters, public instruction is free and compulsory in the primary grades, and controlled by the national government through a council of education. There are two national universities. The capital of the republic is Buenos Aires, the state religion is Roman Catholic. References: J. I. Rodriguez, *Am. Constitutions* (1905), I, 97–132; *Bull. of the Pan-American Union; Statesman's Year Book*, 1912, 586–595; *Am. Year Book, 1910*, and year by year.

ALBERT HALE.

ARISTOCRATIC GOVERNMENT. An aristocratic government is one in which the sovereignty is vested in, and is exercised by the few. According to Austin, if the proportion of the "sovereign number" to the governed be extremely small, it constitutes an oligarchy; but the majority of writers use the term oligarchy to denote a government ruled selfishly by the few. Aristotle defines it as "a state where the rich and those of noble family being few, possess it, while a state governed by the best men, upon the most virtuous principles, and not according to the arbitrary definition of good men, has alone the right to be called an aristocracy." It is distinguished from a democracy in being a government by a particular class separate and distinct from the bulk of the population, and, on the other hand, from a monarchy, in being a government by the few instead of by a single individual. But the Aristotelian classification of government into monarchy, aristocracy and democracy, on the basis of number, lends itself to description only insomuch as it indicates the number and proportion of the population possessed of the consciousness of the state and actually participating in government. Accepting, therefore, in this sense the numerical basis as the distinguishing mark of the definition, aristocracy seeks its justification in the principle of the natural differences between men, as democracy justifies itself in the principle of the equality of all men.

The term aristocracy is also applied to an order or class of persons; in France the noblesse and clergy, before 1789, were called the French aristocracy; in England the peers and their families, the wealthy land owners and that class known by the name of "gentlemen" are termed the aristocracy. "Aristocracy of birth" and "aristocracy of wealth" are also terms commonly employed. History furnishes numerous examples of governments in the hands of an aristocracy. Such was the Roman republic after the expulsion of the Tarquins; also the republics of Venice, Genoa and the Dutch Netherlands; but at present there are few governments exclusively in the hands of an aristocracy, though the aristocratic prin-

ciple is recognized in the great majority of the present states.

See CONSTITUTIONS, CLASSIFIED; STATES, CLASSIFICATION OF; DEMOCRACY, HISTORY OF.

References: Aristotle, *Politics and Economics*, (trans. by E. Walford, 1876), Bks. iv–vii; J. K. Bluntschli, *The Theory of the State* (6th ed., trans., 1885), 412–430; T. D. Woolsey, *Pol. Sci.* (1878), II, 1–43; W. W. Willoughby, *The Nature of The State* (1896), 361–372.

KARL F. GEISER.

ARISTOTLE. See POLITICAL THEORIES, ANCIENT AND MEDIAEVAL.

BOUNDARIES OF THE STATE OF ARIZONA, SHOWING TERRITORIAL CHANGES

ARIZONA. Arizona, the last of the territories in the main continental area of the United States, was admitted as a state in 1912. Discovered first by Spaniards in 1539, it was part of Spanish New Mexico, then of independent Mexico. It was ceded by the latter to the United States by the treaties of 1848 and 1853, and was made a separate territory in 1863 (*see* ANNEXATION TO THE U. S.). It has an area of 113,020 square miles; its population in 1880, was 40,440, and in 1910 204,354.

The influence of Spain and Mexico upon the form of state or local government in the American period is practically negligible. The constitution was framed by a convention elected according to the provisions of the enabling act of 1910; it was adopted by the people in February, 1911, and amended by direction of Congress and the President, as a condition of the admission of the territory, in December, 1911. The keynote of the government established by this constitution is contained in the declaration of rights: "A frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government."

In addition to the usual three separate departments of government, the system of "reserved powers" of initiative, referendum, and the recall are elaborately provided for. Ten per cent of the qualified electors may propose any measure except a constitutional amendment which requires fifteen per cent; five per cent of the electors may require the submission of any act of the legislature, with certain exceptions specified. Similar powers of initiative and referendum are reserved to the electors of every incorporated local unit of the state.

Besides provision for impeachment, every elective public officer, is subject to recall from office by the qualified electors. The petition for a recall election must be signed by twenty-five per cent of all the votes cast for all candidates for the office held by the incumbent whose recall is demanded; it may not be presented within six months after the election, except in the case of members of the legislature. The recall is decided at a special election. The first legislature in 1912 provided procedure for the "advisory recall" of the United States Senators, Representatives in Congress, and District Judges of the state (*see* RECALL).

The legislature consists of a senate of 19 members and a house of representatives of 35 members, all elected for two years. Each house chooses its own presiding officer since the state has no lieutenant governor. The

sessions of the legislature are biennial and limited to sixty days.

The governor, secretary of state, who takes the place of the governor in emergencies, auditor, treasurer, attorney general, and superintendent of public instruction are elected for two years; the treasurer is ineligible to succeed himself. The governor has the power to pardon and to veto measures passed by the legislature except those referred to the people for final action. The supreme court consists of three judges elected for six years. The superior court in each county has one judge for each 30,000 of population or major fraction of 30,000, who is elected for four years. The system of local courts usually found in precincts and municipalities is established.

Suffrage, in the constitution of 1911, was limited to male citizens, twenty-one years of age or over and resident in the state one year, but an amendment adopted Nov. 5, 1912, gives women the right to vote and to hold public office. Voting upon the issue of bonds and upon special assessments is confined to electors who are also property tax-payers. The constitution directs the legislature to enact a primary election law for the nomination of all elective officers in the state, the counties, and the cities, including the nomination of candidates for United States Senator. Such a law was passed in 1912.

Each county is governed by a board of supervisors, of three members elected for two years, together with the usual county officers. Cities of 3,500 inhabitants or more may frame their own charters which must be accepted by the people and approved by the governor before becoming effective.

A corporation commission of three members elected for six years has almost unlimited powers of supervision, regulation, and prescription over corporations chartered or operating in the state, especially public service corporations, a term made unusually comprehensive by the constitution itself. An amendment adopted Nov. 5, 1912, grants to state and municipal corporations the right to engage in industrial pursuits. The eight-hour day in public employment is set in the constitution, as is also the abrogation of the common law doctrine of fellow servant and of riparian water rights.

The state has a well organized public school system, a university, two normal schools, and three other public institutions, for the support of which Congress made extensive land grants in the enabling act.

The great mining and railroad companies have been potent factors in the politics and the economic development of Arizona Several of the towns like Bisbee and Jerome are substantially proprietary in their character. The undervaluation of great mining properties by local assessors, long a serious political evil, was somewhat remedied by legislation in 1907. The territory was generally Democratic, and in the first state election that party elected practically its whole ticket and nominated two Democrats for United States Senators. In 1912 the Democrats polled the largest popular vote, the Progressives ran second, the Republicans third.

See CONSTITUTIONS, STATE; CONSTITUTIONS, STATE, LIMITATIONS IN; LEGISLATION, DIRECT; PRIMARY, DIRECT; RECALL; STATE GOVERNMENTS.

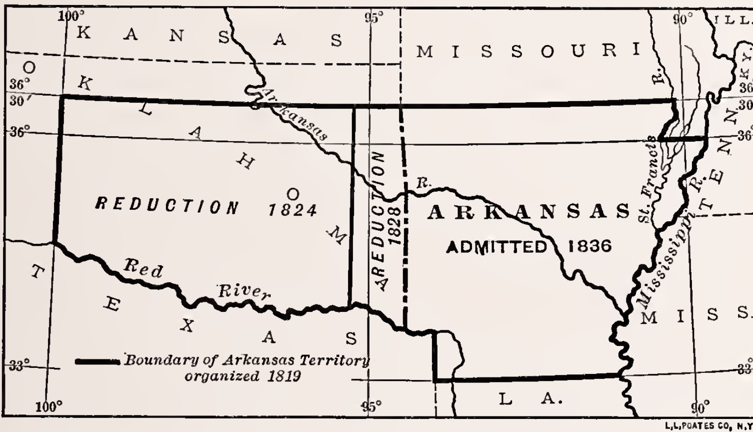
References: *The Constitution of the State of Arizona; The Revised Statutes of Arizona* (1901); *Arizona Session Laws*, 1903, 1905, 1907, 1909, 1912; F. N. Thorpe, *Federal and State Constitutions* (1909), I, 255–260; H. H. Bancroft, *History of Arizona and New Mexico*, being XVII, of his *Works* (1889).

KENDRIC C. BABCOCK.

ARKANSAS. The first Europeans to visit the present state of Arkansas were De Soto (1541) and Marquette and Joliet (1673). The first settlement was made by De Tonti, a Frenchman, at Arkansas Post (1686). Until 1812 Arkansas was a part of Louisiana (*see*). From then it formed a part of the Missouri territory until 1819, when it became a territory. In 1821 the capital was moved from Arkansas Post to Little Rock. In 1836 a convention, elected without any enabling act, drew up a constitution, applied for statehood, and the state was admitted June 15.

The first constitution contained the usual bill of rights and provided for a governor, legislature of two houses, and judiciary. Suffrage was universal among free white citizens. The legislature was directed to improve the sixteenth section lands and apply the proceeds to maintain schools. Slavery was legalized and the legislature was forbidden to emancipate without consent of owner, but was allowed to prohibit the importation of slaves for sale. All property subject to taxation must be taxed ad valorem and at the same rate. The legislature might incorporate one general bank with necessary branches and one other bank "to promote the great agricultural interests" and was authorized to pledge the credit of the state for the necessary funds. Amendments might be adopted by a two-thirds vote of each house in two successive assemblies. In 1846 an amendment forbade the incorporation of any bank. The secession constitution (1861) differed in no essential from the first, except that supreme court justices were appointed by the governor. The first loyal constitution (1864) was adopted by popular vote. By it slavery was abolished and supreme court justices were made elective. The reconstruction constitution (1868) abolished all religious tests for office and oath in court. The suffrage clause was drastic, going farther than the act of Congress, but this was removed in 1873.

The present constitution was adopted on the overthrow of carpet-bag government (1874). It contained a very liberal suffrage clause, but in 1893 the payment of a poll tax was required. No registration can be required and all elections must be by ballot. The senate consists of 35 members and the house of 100. The legislature meets biennially. By an amendment of 1912, proposed by petition, the session is limited to 60 days. Certain special and local legislation is prohibited, but the prohibition is so narrow that much of the time of the assembly is taken up with legislation of this kind. To limit the amount to be recovered for injuries of person or property is forbidden priations are made by the quorum court, consisting of the county judge and the justices of the peace. Towns are governed by mayors and councils. The legislature of 1913 began granting commission government to cities. The limit of taxation is 5 mills, but special assessments may be levied on property adjacent to improvements. At the head of the educational system stands the university. There is a branch normal for negroes. For public schools the state levies a tax of 3 mills, which is apportioned according to the school population. A law of 1911 provides for state aid to high schools. There are four agricultural high schools and a state normal school.



Boundaries of the State of Arkansas, Showing Territorial Changes

All appropriations, except those for the executive, legislative, and judicial departments, must be made in separate bills. All appropriations not deemed by the speaker necessary to the expenses of government must be passed by a two-thirds vote. The governor may veto items in appropriations. The initiative and referendum were adopted in 1910. A constitutional amendment providing for the recall of all elective public officers, proposed by initiative petition, failed of adoption at a state election Sept. 9, 1912, because only three amendments may be offered at one election. There are numerous exemptions of property from sale on execution. All judges are elected. Chancery courts are provided by popular vote. The state, counties, and towns were forbidden to lend their credit and the last two to issue bonds, but since 1903 cities of the first and second class may issue bonds under careful restrictions. The general property tax is in vogue, with no exemptions of private property. The limit of state taxes for all purposes is 10 mills, for county taxes 5 mills plus 5 mills for debts existing in 1874, and 7 mills for schools as determined by the voters of the school district. Taxation of franchises was begun in 1907. A tax commission was created in 1909. The county system of local government prevails. The tax levy and appro-

The state has always been Democratic, except for the period 1864–1874. In the elections of 1912 the Republican candidate stood second, and the Progressive candidate third. In the general assembly of 1911 there were only six Republicans. Direct primaries for the nomination of officers, including United States Senators, have been in use for several years. The population of the state by decades is as follows: 1840, 97,574; 1860, 435,450; 1880, 802,525; 1900, 1,311,564; 1910, 1,574,449.

References: W. F. Kirby, *Digest* (1904) contains the constitutions; F. N. Thorpe, *Federal and State Constitutions* (1909), I, 261–275; *Reports* of the Secretary of State (Biennial); F. S. Hempstead, *Pictorial Hist. of Arkansas* (1890); *The South in the Building of the Nation* (1909), III. 263–334.

David Y. Thomas.

ARMED NEUTRALITY. An alliance of neutral powers was a notable episode in the wars caused by the American Revolution. British aggression on neutral commerce caused Russia (1780) to declare the rights of neutrals to trade with belligerents limiting contraband and blockades, and adopting the rule of "free ships, free goods" for which Congress had declared. To support these principles she armed a fleet and invited coöperation of other powers.

On these principles, before the peace of 1783, every important civilized maritime power opposed England. October 5, 1780, Congress adopted the principles and sought admission to the alliance. Dana was not received in Russia, however, and reported that the United States could not be allowed to accede formally while a belligerent; and after peace, Congress, unwilling to complicate American interests with the politics of Europe, advised (October 29, 1783) no further negotiations on the subject. See NEUTRALITY, PRINCIPLES OF. References: J. B. Moore, *Digest Int. Law* (1906), VII, 558; Eugene Schuyler, Am. Dipl. (1886), 374; Francis Wharton, *Dipl. Correspondence of Am. Revolution* (1889), III, 607, V, 701–2, VI, 306, 473, 718, 742; *No. Am. Rev.* XVII (1823), 169. J. M. CALLAHAN.

ARMIES AND NAVIES, FOREIGN

Great Britain.—During the last forty years it has been a maxim that defective armament rendered a country liable to invasion; and armies and navies have been developed under the stimulus of international competition. Compulsory service is the rule throughout Europe except in Great Britain, where the necessity of protecting commerce has led to the creation of a fleet sufficient to serve as a first line of defense for an island empire. The two-power standard is still maintained, though not as yet a force double that of the strongest naval competitor. The cost of the British naval programme partly explains the reluctance to provide for universal service and compete with the continental powers in a huge army and unlimited reserves. The troops kept in the United Kingdom number 134,000; 75,000 serve in India, with 157,000 native soldiers; and 45,000 are stationed in the colonies, though none are left in the self-governing commonwealths. In order to provide reserves, soldiers are dismissed from the ranks after completing half of their nominal enlistment of 12 years: and a territorial army, which has absorbed the militia and volunteer organizations, numbers 275,000. The home forces are organized with a view to provide an expeditionary force of all arms without crippling the system of coast defense. The regular forces have 10,000 officers, besides 2,600 serving with native troops in India. About 35,000 recruits are annually secured by voluntary enlistment.

Germany.—The constitutional limit for the German army is 1 per cent of the population of the empire; but with 600,000 men in the ranks, this figure is not reached. Shortening the term to two years allows more recruits to pass through the ranks, and younger and more numerous reserves are thus secured. Many of those who might be summoned at the age of 20 are excused from serving. Educated youths, able to pay their own expenses, serve only a year. Officers and non-commissioned officers are professional soldiers, though liable to be transferred to posts in the civil service. Trained men pass to the reserve for 5 years and join territorial organizations for the rest of the period before they attain 45 years. Of the 1,100,000 men who reach the military age each year 208,000 join the army and 9000 are assigned to the navy.

Continental Europe.—Following the German system of two years with the colors but allowing fewer exemptions and requiring longer service in the reserve, France is able to maintain an active army of 540,000 men besides a colonial force of 120,000, half of them Europeans. The events of 1913 have led to a decision to restore the three year term of service in the French army and to changes in the German system which will meet the numerical increase thus obtained by France. The home troops are organized into 19 army corps, for which 1,220,000 men would be levied on a war footing; there are 145 regiments of reservists and a territorial force of 1,200,000 men. Italy's peace establishment numbers 240,000; and 500,000 more could be raised for war. Austria-Hungary keeps 400,000 men under arms and has ample reserves of trained men. The peace establishment of Russia, which has twice the population of Germany, is 1,200,000 men; 1,258 battalions of infantry, 636 batteries of field-artillery, and 727 squadrons of cavalry make up 33 army corps, of which 28 serve in Europe with 7 in one mass. In general, it may be said that compulsory service supplies as many soldiers as any country can support without economic distress, but it cannot provide expeditionary forces without disturbing the organization of the national defense.

Among the countries where the practice is anomalous Turkey has an army of 420,000; and it does not appear that this number will be increased under the new rule which allows subjects not of the dominant religion to enter the ranks. The success of the allied invaders of European Turkey in 1913 may be held to prove the superiority of national armies raised by conscription over a lower form of military organization. Spain applies conscription in raising a force of 115,000; but conscripts are allowed to hire substitutes or pay commutation, privileges which make the service unpopular, especially when troops are to be sent to Africa. The relief due to the loss of remote colonies has not reconciled the army with the nation.

Switzerland has a remarkable national militia with compulsory but popular service for

RELATIVE NAVAL STRENGTH OF THE PRINCIPAL NATIONS

(December, 1912)

Nation	Vessels Completed					Vessels Building				
	Battleships	Cruisers	Destroyers	Submarines	Tonnage 1911	Battleships	Cruisers	Destroyers	Submarines	Tonnage 1914
Great Britain	59	113	192	65	1,896,149	15	10	31	17	2,324,579
United States	31	42	36	20	757,711	6	1	14	18	885,066
Germany	30	48	109	14	749,699	12	6	12	10	1,087,399
France	20	32	72	66	630,705	4	0	13	15	741,425
Japan	15	26	58	10	421,369	7	3	2	3	590,119
Russia	9	17	95	31	297,819	7	0	13	8	473,879
Italy	8	16	22	9	203,812	4	3	10	11	312,122
Austria	6	9	14	6	167,993	4	0	6	66	267,442

Argentina and Brazil have each purchased a pair of battleships of the latest type, the former in the United States, the latter in England. It is reported that Chili proposes similar plans.

from 65 to 90 days upon enrollment and 11 days in each of the next 7 years. This enables a population of 3,750,000 to count on 200,000 trained men. Similar methods are used in the Netherlands and in Sweden for the periodical training of recruits by professional officers detailed for instruction.

Navies.—Naval vessels are no longer localized or distributed for harbor defense; nor are they scattered about the ocean for predatory purposes. The reaction from commerce-destroying and other inconclusive forms of warfare has led to reliance upon battleships as the main element of naval strength. The dreadnought or "all-big-gun type" of 1906 has discredited earlier designs and caused the competitive expenditure of vast sums of money. Later vessels show many improvements over the original, size increasing by 1911 from 17,900 tons to 27,000, with ten 13.5-inch guns in place of eight 12-inch. The British navy includes many auxiliaries, including scouts, torpedo-boat-destroyers, and submarines. Germany is an eager competitor. The German naval programme contemplates "defence by battle on the high seas", and its plans of construction cover several years. The Italian adventure in Tripoli does not confirm the views of alarmists; with complete command of the sea invasion was by no means rapidly executed.

See Army, Standing; Education, Military and Naval; Enlistment, Naval and Military; Militarism; Military and Naval Expenditures; Officers, Military and Naval; Pensions, Military and Naval; Reserves.

References: F. von Bernhardi, *Germany and the Next War* (1912); F. Culmann, *L'Armée Francaise et l'Armée Allemande* (1908); I. Hamilton, *Compulsory Service* (1911); J. Jaures, *L'Armée Nouvelle* (1911); L. Abeille, *Marine Francaise et Marines Etrangères* (1906); Viscount Hythe, *Naval Annual* (1912); F. T. Jane, *Fighting Ships* (1912); "Submarines' in *Quart. Review*, October, 1911, 462–481; *Encyclopaedia Brittanica* (11th ed., 1911), II, 604, 610, X, 795, XI, 824, XXIV, 891–922, XXVI, 245, XXVII, 606; Royal United Service Institution *Journal* (1911) 1434, 1455; U. S. Navy Department, *Annual Reports, Am. Year Book, 1910* and year by year; U. S. War Department, *Strength and Organization of the Armies of France, etc.* (1911). C. G. Calkins.

ARM IN ARM CONVENTION. A national convention held at Philadelphia, August 14, 1866, in support of President Johnson and his policy of reconstruction, made up of members of the Republican (Johnson supporters) and Democratic parties in the north and of "moderate" men from the South—so called from the manner in which the Massachusetts and South Carolina delegates entered the convention wigwam. See Johnson, Andrew. O. C. H.

ARMISTICE. An armistice is a suspension of military operations by agreement between the belligerents. Armistices vary according to circumstances and may be definite or indefinite as to time prescribed for suspension of hostilities and general or local as to area within which they are operative. See War, Carrying on; War, International Relations. References: G. G. Wilson *Int. Law* (1910), 360; H. W. Halleck, *Int. Law* (1908), II, 346, 357. G. G. W.

ARMORIES, PUBLIC. Since the War Department has undertaken to supply the national guard throughout the country with arms and equipments, under the militia law of 1903, the armories and arsenals controlled by the states have been regularly inspected by officers of the army. Many of the states allow each company from $200 to $600 a year for rents, and construct no public armories. This is the case in the District of Columbia, where the regiments organized by special acts of Congress have, according to the inspectors, "disgracefully discouraging armory conditions". In many cities the older organizations own their armories; and some of these are notable

buildings. The First Corps of Cadets has a fine stone building in Boston with club rooms, museums and libraries, as well as a drill-hall for a battalion. Massachusetts builds armories at an average cost of nearly $100,000; and other states are equally liberal. In New York gymnasiums, recreation rooms and bathing facilities are recognized as necessities in armories as well as large drill-halls and target-galleries. The conditions in the southern and western states are less uniform and satisfactory. See MILITIA; ORDER, MAINTENANCE OF; PUBLIC BUILDINGS. References: U. S. War Department, *Annual Reports,* esp. (1908), I, 166, 174-180, 307-319. C. G. C.

ARMS, RIGHT TO BEAR. The guaranty found in the Federal Constitution (Amendment II) of the right to keep and bear arms (which applies only to the Federal Government) and similar provisions found in state constitutions are coupled with the explanation that a well regulated militia is necessary to the security of a state; and this explanation seems to indicate the extent of the guaranty, although it has been held to be broad enough to cover the keeping and carrying of such weapons as are suitable for self-defense, or defense of the home. But the keeping of unusual weapons or the carrying of usual weapons in an unusual manner, as by having them concealed on the person, may be prohibited. Historically, the guaranty seems to relate back to a complaint and declaration in the English Bill of Rights (1689) that inasmuch as the King had endeavored to subvert and extirpate the Protestant religion and the laws and liberties of the kingdom by causing Protestants to be disarmed when Papists were armed and employed contrary to law (among other abuses named), "the subjects which are Protestants may have arms for their defense suitable to their condition, and as allowed by law." See BILLS OF RIGHTS; CONSTITUTION OF THE U. S., AMENDMENTS TO. E. McC.

ARMY REGULATIONS. The President approves or modifies regulations for the Army of the United States as Commander-in-Chief under the Constitution. The powers of Congress for regulating the land and naval forces have been exercised by passing the Articles of War (*see*) and other military laws, to which the executive regulations must conform. The first edition of the regulations, as approved by the President in 1813, was annexed to these statutes, and its text extended to one tenth the length of recent issues of the *Army Regulations.* Drill-books and regulations regarding uniforms are now published separately from the *Army Regulations,* though combined with them in the earliest editions. See COURTS MARTIAL; JUDGE ADVOCATE GENERAL; MILITARY LAW. References: U. S. War Department, *Regulations for the Army of the U. S.* (1911), *Military Laws* (1908), 178-180, 964; W. Winthrop, *Digest of Opinions of Judge Advocate General* (1901), 703-758. C. G. C.

ARMY, STANDING. Constitutional Provisions.—The Constitution gave to Congress the power of raising and supporting armies (Art. I, Sec. viii, ¶ 12), thus accepting the principle of the English Bill of Rights of 1689 which declared that the raising or keeping of a standing army within the kingdom, except it be by the consent of Parliament, is against the law. The fact that appropriations for the Army are limited to two years also suggests the British example; but in the debates, one delegate objected that the clause would imply a standing army, and another associated the two year period with the term of representatives in Congress. The British restriction would deprive the Crown of discipline if Parliament refused to sanction the renewal of the mutiny act; but the American forces are permanently subjected to military law by the Fifth Amendment to the Constitution. Though the navy is not especially included in the biennial rule, the financial control is the same.

The provisions by which the states were given control of the training of the militia and the appointment of officers have proved more effective limitations on the military authority. Among the earliest amendments to the Constitution is one maintaining the right to bear arms and another forbidding the quartering of troops in private houses; both indicate aversion to certain European incidents of militarism, though the Fifth Amendment gives permanent support to the discipline of the Army.

During its first session in 1789 Congress enacted articles of war, a modification of the version of 1775, which was based on the British mutiny act. In authorizing the President to take military measures to suppress rebellion, domestic violence, or combinations to prevent the enforcement of law, or to deprive any citizens of their legal rights, the "land and naval forces of the United States" are coupled with the militia in various statutes.

Regular Army, 1789 to 1801.—During Washington's two terms as President the regular army varied in strength from 1000 to 5000 men, and it was chiefly employed on the frontiers of Ohio. In 1798 the enlistment of 10,000 men, to serve for 3 years in a provisional army, was authorized, in view of the prospect of a rupture with France. Recruiting was slow, and the appointment of Washington as Commander-in-Chief failed to conceal the fact that Hamilton expected to control the Army as well as the Federal party, with little regard for the views of President Adams. Hamilton's plan for embarking 7000 men for a filibustering expedition in South America, under the convoy of a British fleet, accounted for the President's distrust of his military capacity;

AUTHORIZED STRENGTH OF THE ARMY, 1912

	Major Generals	Brigadier-Generals	Colonels	Lieutenant-Colonels	Majors	Captains	First Lieutenants	Second Lieutenants	Chaplains	Total Commissioned Officers	Enlisted Men
General officers	6	15	----	----	----	------	------	------	----	21	------
Adjutant General's Department	----	1	5	7	10	------	------	------	----	23	------
Inspector General's Department	----	1	3	4	9	------	------	------	----	17	------
Judge Advocate General's Department	----	1	2	3	6	------	------	------	----	12	------
Quartermaster Corps	1	2	12	8	48	102	------	------	----	183	403
Medical Department	----	1	15	24	105	133	*a*340	------	----	*a*618	(*b*)
Corps of Engineers	----	1	12	19	39	51	47	43	1	213	1,942
Ordnance Department	----	1	6	9	19	25	25	------	----	85	735
Signal Corps	----	1	1	2	6	18	18	------	----	46	1,212
Bureau of Insular Affairs	----	1	1	----	1	------	------	------	----	3	------
Fifteen regiments of cavalry	----	----	15	15	45	225	225	225	15	765	13,823
Six regiments of field artillery	----	----	6	6	12	66	78	78	6	252	5,417
Coast Artillery Corps	----	1	14	14	42	210	210	210	14	715	18,471
Thirty regiments of infantry	----	----	30	30	90	450	450	450	30	1,530	30,341
Porto Rico Regiment of Infantry	----	----	----	----	----	11	10	10	1	32	591
Military Academy	----	----	2	5	----	------	------	------	----	7	630
Detached officers	----	----	8	9	27	77	79	------	----	200	------
Additional officers	----	----	32	13	----	------	------	------	----	45	------
Recruiting parties, recruit depots, and unassigned recruits	----	----	----	----	----	------	------	------	----	------	7,000
Service school detachments	----	----	----	----	----	------	------	------	----	------	587
United States Military Prison guards	----	----	----	----	----	------	------	------	----	------	320
Indian scouts	----	----	----	----	----	------	------	------	----	------	75
Total Regular Army	7	26	164	178	459	1,368	1,482	1,016	67	4,767	81,547
Additional force: Philippine scouts	----	----	----	----	----	52	64	64	----	180	5,732
Grand Total	7	26	164	178	459	1,420	1,546	1,080	67	4,947	87,279

a Includes 113 first lieutenants of the Medical Reserve Corps on active duty, and 60 dental surgeons.
b Under the act of Congress approved March 1, 1887 (24 Stat. L., 435), the enlisted men of the Medical Department (Hospital Corps) are not to be counted as part of the strength of the Army. The authorized strength of the Hospital Corps is 3,500 enlisted men.

DISTRIBUTION OF THE COMBATANT TROOPS

(October 1, 1912)

	Infantry	Cavalry	Field Artillery	Coast Artillery	Philippine Scouts
United States	22 Regiments	12 Regiments	4½ Regiments	158 Companies	----------------
Alaska	1 Regiment	----------------	----------------	----------------	----------------
Panama	1 Regiment	----------------	----------------	----------------	----------------
Porto Rico	1 Regiment	----------------	----------------	----------------	----------------
Hawaii	2 Regiments	1 Regiment	½ Regiment	2 Companies	----------------
Philippines	3⅓ Regiments	2 Regiments	1 Regiment	10 Companies	52 Companies
China	⅔ Regiment	----------------	----------------	----------------	----------------
Totals	31 Regiments	15 Regiments	6 Regiments	170 Companies	52 Companies

and his supposed purpose of retaining the provisional forces as a standing army, to carry on a campaign of political repression explains the anti-military utterances of his political opponents.

Under the influence of Jefferson and Madison the Virginia Assembly in 1798 adopted resolutions that, "our security from invasion and the strength of our militia render a standing army unnecessary"—a view which Madison had to renounce in 1814; and an address was circulated denouncing the creation of an army and navy as a first step toward monarchy. The force authorized by Congress might have grown to 40,000 had recruits been willing to enlist, but its numbers remained too small for completing the organization, and it was mustered out in 1800 as soon as the treaty was made with France.

Regular Army, 1811 to 1860.—In 1811 the authorized force was 35,000; but men would not enlist for 5 years, even when bounties were offered; and militias were the principal force up to 1815. While no proposal to abolish a standing army was made after the war, a reduction to 6,000 men was voted in 1820; and Calhoun, then Secretary of War, tried to retain a skeleton organization which could be trebled in force without additional officers. In 1838 the force was brought up to 12,500, the Secretary of War pointing out that a militia of 1,500,000 was sufficient to check any assault on the liberties of the country by a standing army, and that the concentration of 45,000 Indians on the frontier made an increase necessary. In the Mexican War 73,000 volunteers were enlisted and a regular force of 31,000 men was authorized, but as this force was

found to be not immediately necessary, it was not recruited to full strength.

Regular Army Since 1861.—During the Civil War, Congress authorized 39,000 regulars, but only 25,000 (less than 3 per cent of the troops then employed) enlisted up to 1863, recruits preferring organizations noted for "laxity of discipline." The regular Army after 1866 was limited to 25,000 enlisted men; and the act of April 22, 1898, which provided for an increase of 61,000 also specified a reduction after the conclusion of the Spanish War. The law of 1901 provided for an organization under which the number might be varied at the discretion of the President from 59,000 to 100,000. The force in 1912 is made up of 4,650 officers and 71,000 men enlisted for 3 years, of whom about 75 per cent are stationed in the United States; the mobile army is thus in a smaller proportion to the total population at the present time than it was in 1876, although in the 37 years since that time the population has doubled.

See ARMIES AND NAVIES, FOREIGN; ARTICLES OF WAR; EDUCATION, MILITARY AND NAVAL; ENLISTMENT, NAVAL AND MILITARY; FORTIFICATIONS; MARINE CORPS; MILITARY AND NAVAL EXPENDITURES; MILITARY LAW; MILITIA; OFFICERS, MILITARY AND NAVAL; RESERVES, ARMY AND NAVY; VIRGINIA AND KENTUCKY RESOLUTIONS; VOLUNTEER.

References: J. Madison, *Journal of the Federal Convention* (1893), 554, 616, *Writings* (ed. by G. Hunt, 1900–1910), VI, 332, 339; A. Hamilton, *Writings* (ed. by J. C. Hamilton, 1850–1851), VI, 280, 325, 347, 394; J. C. Calhoun, *Works* (ed. by R. K. Crallé, 1883), V, 25–30, 80–93; J. Adams, *Works* (ed. by C. F. Adams, 1850–1856), VIII, 581, 585, 600; H. Adams, *Hist. of the U. S.* (1890), II, 147, 152, 159; J. S. Bassett, *Federalist System* (1906), 114, 237–244, 273, 284; F. V. Greene, *Revolutionary War and Military Policy* (1911), 286, 297–330; E. Upton, *Military Policy of the U. S.* (1907), 75, 80, 85–89, 92, 149–152, 193, 207, 216, 257–261; J. A. Fairlie, *National Administration* (1905), ch. ix, x; L. D. Ingersoll, *War Department* (1880); T. F. Rodenbough and W. L. Haskin, *Army of the U. S.* (1896); *House Reports*, 45 Cong., 3 Sess., No. 555, (1878); *Am. Year Book, 1910*, 360, 363, *ibid, 1911*, 462–469, *ibid, 1912*, 141–144, 291–301; U. S. War Department, *Military Laws* (1908), 163–191, 204, ch. xlvii, 1233–1237, *Annual Reports, 1899–1903* (1904), 6, 77, 146, 247, 325, *ibid* (1908), I, 5–8, *ibid* (1910), I, 147–151, *ibid* (1911), 1, 8, 136, 190, 206, *ibid* (1912), I, 3–5, 65. C. G. CALKINS.

ARREST. In Criminal Practice.—The seizing or apprehending of a person by lawful authority, for the purpose of taking him into the custody of the law. Arrest may be for the purpose of preventing the commission of a crime or to insure that a person charged with crime, shall appear or answer for it in court at the proper time, or to compel the obedience of a person to an order or other process of court.

In Civil Practice.—The apprehension of a person, by authority of a court or magistrate, in furtherance of proceedings in a civil action.

See WARRANTS. H. M. B.

ARSENAL. See ARMORIES, PUBLIC; ORDNANCE, CHIEF OF.

ART COMMISSIONS. Among the functions undertaken by cities in quite recent years is that of the supervision and placing of works of art. With the great increase in the number of public buildings, it was felt that more care should be taken in preparing the plans for these buildings and in selecting sites which would show them to best advantage. Consequently, commissions to supervise such matters have been appointed in a number of cities, generally known as the art commission, but sometimes called the architectural commission. The powers of these commissions vary; but, in general, they include jurisdiction over all works of art, such as statues, ornamental fountains and memorials of all kinds, acquired by the city whether by gift or purchase; the removal and relocation of works of art already possessed by the city; all designs of public buildings, bridges, approaches, etc. In some cases no work of art, such as statues, etc., can become the property of the city without the approval of the commission. The commission usually has power to select or must approve the location of any piece of art. In 1909, the Art Commission of New York considered 179 matters, involving the expenditure of approximately $43,000,000. There is generally a provision to the effect that some of the members, at least, must be sculptors, painters, architects, etc., or designated or appointed by certain institutions interested in art, etc. There seems to be no uniformity in these matters. Boston, New York and Baltimore were among the first to establish such commissions, the one in Baltimore being created in 1890. See ART, PUBLIC; BRIDGES; CITY PLANNING; MONUMENTS, PARKS AND BOULEVARDS; PUBLIC BUILDINGS. **References:** J. M. Carrère "Art Commission of New York" in Art Comm. of New York, *Report* (1909); Statutes creating Commissions in New York, Boston, etc. H. E. F.

ART, PUBLIC. The American colonists brought with them a British tradition of the duty of the community to provide stately buildings for the public services; hence, the older town halls, state houses, and college buildings almost all have dignity and character. A few statues, mostly of lead, ornamented public places. In the construction of later capitols, state and national, some effort

was made to embellish them with statues, reliefs and pictures, notably the enormous Trumbull pictures in Washington. A few state and city buildings, especially the old State House of Boston, and the City Hall of Charleston, contain good portraits, and in many cities each mayor leaves some kind of likeness of himself.

It cannot be said that public buildings or their contents have in general much influence on public taste, though there are some splendid examples to the contrary, particularly the public libraries of Boston and New York, and the state capitols of Texas, Rhode Island, Wisconsin, and Minnesota. Most of the statues in the United States are the result of private subscriptions; the more recent monuments and statues set up out of legislative appropriations are usually creditable. The principal relation of government to art is through artistic or art training in public schools, and in art commissions (*see*) with authority to pass upon public buildings or monuments.

See ART COMMISSIONS; ART SCHOOLS; MONUMENTS, PUBLIC; MUSIC, PUBLIC; PARKS AND BOULEVARDS; PUBLIC BUILDINGS.

References: J. L. Van Dyke, *Hist. of Am. Art* (1903-1905); *Am. Year Book, 1910,* 737, 739, *1911,* 754, *1912,* 746, and year by year.

A. B. H.

ART SCHOOLS. Few American communities feel any responsibility for the continuance of a tradition of art. In most school systems drawing in colors is taught but the formal schools for the training of painters and sculptors are private or endowed. Most of the art museums in the country maintain some form of instruction of this kind. Boston keeps up, out of public taxation, a Normal Art School in which design is taught and many state normal schools have departments of art. Architecture, however, is looked upon as a professional subject, and is taught in public technical schools and universities. Most of the famous American artists have had foreign training; and there is nowhere a system of public education through which artists may gain their training. See ART, PUBLIC; EDUCATION AS A FUNCTION OF GOVERNMENT; EDUCATION, INDUSTRIAL; EDUCATION, RECENT TENDENCIES IN; EDUCATION, PUBLIC TECHNICAL. References: J. L. Van Dyke, *Hist. of Am. Art* (1903-1905).

A. B. H.

ARTHUR, CHESTER ALAN. Chester Alan Arthur (1830-1886), twenty-first President of the United States, was born at Fairfield, Vt., October 5, 1830. In 1854 he began the practice of law in New York City, and rose rapidly to prominence in his profession and in the councils of the Republican party. In 1860 he was appointed engineer-in-chief on the staff of Governor Morgan, and from 1861 to 1863 was inspector-general and quartermaster-general of the state militia. A change from a Republican to a Democratic administration, in 1863, removed him from office, and he resumed his law practice. In 1871 he was made collector of the port of New York, and held the office until 1878, when he was removed. In 1880 he was elected Vice-President on the Garfield ticket, and on the death of Garfield, in September, 1881, became President. His previous connection with the machine element of his party aroused strong prejudice against him, but his wise and dignified course gradually allayed opposition and even won him esteem. His administration was fruitful of notable legislation, including the Civil Service Act, Contract Labor Act, Anti-Polygamy Act, and an act restricting Chinese immigration. He died at New York City, November 18, 1886. See NEW YORK; VICE-PRESIDENT. References: DeA. S. Alexander, *Pol. Hist. of the State of N. Y.* (1906), III; E. E. Sparks, *National Development* (1907); J. G. Wilson, Ed., *Presidents of the U. S.* (1894).

W. MACD.

ARTICLES OF CONFEDERATION, 1781-1789

Formation.—The leaders chiefly interested in the revolutionary movement were, from the beginning, anxious for union and for some plan of organization. As early as July 21, 1775, articles of confederation and perpetual union were discussed in Congress and a plan was then presented by Franklin. By this plan general interests were to be intrusted to a general Congress made up of delegations from the colonies, the number in a delegation to be determined by the proportional population of the colony. Provision was made for amending by a majority of the colonial assemblies. Nothing was accomplished for some months to come. June 7, 1776, a resolution was offered to the effect that "these United Colonies are, and of right ought to be, free and independent states," that steps should be taken for forming alliances, and that "a plan of confederation be prepared and transmitted to the respective colonies." A committee, appointed for the last of these objects, presented Articles of Confederation on July 12; the manuscript copy is in the handwriting of John Dickinson. This scheme of union was elaborate and formed the basis for debate; it contained twenty articles; instead of proportional representation, each colony was to have one vote; a considerable list of important powers was given to the central body of delegates. The plan received much consider-

ation in a committee of the whole, and the committee reported (August 20, 1776) the result of its deliberation. The plan was not immediately adopted, however, but after long delay was discussed again and finally, after some amendments, adopted in Congress November 15, 1777.

Adoption by the States.—The Articles, accompanied by a strong letter from Congress, were submitted to the state legislatures but the states did not act promptly; and, as in so many other ways in those leisurely days, there was hesitation and delay. Most of the state legislatures agreed to the Articles the next year (1778). July 9 the delegations in Congress from New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Virginia, and South Carolina signed the formal ratification. North Carolina delegates signed July 21st; Georgia, July 24th; New Jersey, November 26th; Delaware, May 5, 1779. Maryland, however, persisted in her objections to the confederation and gave clear utterance to her reasons for not ratifying. She objected to some of the large land holdings of some of the states, for Virginia and the states to the south, as well as Massachusetts, Connecticut and New York laid claim to considerable portions of the great western country beyond the mountains (*see* ORDINANCE OF 1787). Maryland, therefore, like some of the others that were hemmed in by comparatively narrow limits, objected to this wide ownership. The western territory, declared the Maryland legislature, "should be considered as a common property, subject to be parcelled out by Congress into free, convenient and independent governments." Not till March 1, 1781, did the Maryland delegates sign the Articles. By that time Congress had proposed that the western lands, ceded or relinquished to the United States, be formed ultimately into distinct republican states; moreover, New York had expressed a willingness to surrender the western country, and Virginia and Connecticut, though annexing certain conditions, had indicated a readiness to do the same thing. Thus, in connection with the question of the confederation was worked out in the large the principle that the western land should belong to the United States and that it should ultimately contain states (*see* STATES, ADMISSION OF).

Terms of Union.—The Articles purported to establish a confederation and perpetual union. According to their terms each state retained its "sovereignty, freedom and independence, and every power, jurisdiction and right" not expressly delegated to the United States in Congress. Provision was made for the working relation between the states: (1) by assuring to the free inhabitants of each state the privileges and immunities of free citizens in the several states; (2) by providing that there should be free ingress and egress to and from each state, and freedom from discriminating commercial restriction and prohibition; (3) by providing for extradition; and (4) declaring that full faith and credit should be given in each state "to the records, acts and judicial proceedings" of every other, thus making principles of international arrangement or of comity articles of agreement between the states. Important restrictions, chiefly intended to prevent combinations between the states or with foreign powers, were placed upon the states; and no state was to have the right to lay imposts or duties interfering with stipulations in treaties formed by the United States "with any King, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain." Only with the consent of Congress could a state maintain an army or navy in time of peace, nor could a state, save after consultation, engage in war unless in imminent danger or in real emergency. It was, however, the duty of each state to keep up a well-disciplined militia, and each state had the right to appoint, in the army raised for general defense, all officers of or under the rank of colonel. Neither the United States nor any state could grant titles of nobility.

Congress.—Congress was composed of delegates annually chosen by the states, each state maintaining its own delegates. Each state was to have one vote, though the numbers in the delegations might differ—no state to have more than seven or less than two representatives. All expenses for the common defense and general welfare, and allowed by Congress, were to be paid out of a common treasury, which was to be supplied by the several states in proportion to the value of land granted or surveyed for any person, the taxes to be levied under the direction of the state legislatures. Congress had exclusive power of making war and peace, except in the cases of emergency before mentioned, entering into treaties, sending and receiving ambassadors, regulating matters of prize, granting letters of marque in time of peace, establishing courts for the trial of piracies and felonies on the high seas, and determining appeals in all cases of capture. In all disputes subsisting or that might arise between states, Congress was to be the last resort and was authorized, when petition was received from any state, to provide a court either constituted by the joint consent of the parties or, by an elaborate process, made up under the direction of Congress out of persons named by Congress from the states.

To Congress also was given sole authority to regulate the alloy and value of coins struck by their own authority or by that of the state, to fix the standards of weights and measures, to regulate affairs with the Indians "not members of any of the states," to establish and manage the post office, to appoint naval and military officers except regimental officers, and

regulate the land and naval forces. It was to appoint "a Committee of the States" consisting of one delegate from each state, and to appoint other necessary committees and civil officers, to appoint a presiding officer, to ascertain the sums of money needed for the service of the United States and to appropriate it for public expense, to borrow money or emit bills of credit, to build and equip a navy and determine upon the number of land forces, making requisitions from each state for its quota in proportion to the number of white inhabitants in such state, and to defray the expense of raising and equipping the soldiers raised by the states in obedience to the requisition. If circumstance made it desirable, however, Congress might require more soldiers from any one state than its proportional quota.

There was one marked restriction upon the action of Congress. Except on a vote of nine states it could not engage in war, or grant letters of marque in time of peace, or enter into treaties or alliances, or coin money, or regulate the value thereof, or ascertain the sums necessary for the defense and welfare of the United States, or emit bills of credit, or borrow money, or appropriate money, or agree on the number of vessels of war to be built or purchased, or determine on the size of the land or sea force to be raised, or appoint a commander-in-chief. A majority of the states was necessary for all measures except adjourning from day to day. A committee of the states or of any nine of them was authorized to execute, in the recess of Congress, such powers of Congress as might, by a consent of nine states, be vested by Congress in the committee, but to that committee no such powers could be delegated as could be exercised only upon the determination of nine states. It was expressly declared that every state should abide by the determinations of Congress on matters within its power, that the Articles should be inviolably observed and that the union should be perpetual. Canada might, if she chose, join the union but no other colony beyond the thirteen could come in unless by the consent of nine states. Any amendment of the Articles must be agreed to in Congress and confirmed by all the states.

Conclusion.—It is plain that the Articles contain a substantial list of powers and that considerable authority is given to the Congress. Many of the most important duties given to the general government under the Constitution adopted in 1788 were by the Articles given to the Congress of the Confederation. But Congress had no satisfactory means and authority to execute efficiently the powers that were granted. A few most important powers, *e. g.*, the power to collect money and regulate trade, proved absolutely essential to the preservation of the union.

See Confederation, 1781–1789; Federal Convention.

References: W. MacDonald, *Select Documents* (1903), 6–15; H. B. Adams, "Maryland's Influence upon Land Cessions," in Johns Hopkins University *Studies*, Ser. III, (1885), 21–54; W. C. Ford, Ed., *Journals of the Continental Congress* (1904), *passim;* C. H. Van Tyne, *The Am. Revolution* (1905), 183–202; G. Bancroft, *Hist. of the U. S.* (Author's Last Revision, 1888), V, 10–15, 199–208.

Andrew C. McLaughlin.

ARTICLES OF WAR. This term is applied to a code of rules, enacted by Congress, for the government and disciplinary control of the constitutional military forces. The name is derived from a similar body of rules which came into operation in the British army soon after the accession of the Stuarts. The English articles rested upon the authority and prerogative of the sovereign, as the commander-in-chief of the military forces of the realm, and first received statutory sanction in 1688, having been enacted by Parliament in that year under the name of the Mutiny Act. For nearly two centuries the Articles of War in the English army were composed of two classes; first the statutory articles, which were added to from time to time, second the paragraphs originating with the sovereign and resting upon his royal prerogative which were known as articles of war. In 1881 the Mutiny Act and the Articles of War were consolidated in a single enactment called the Army Act.

A considerable contingent of colonial troops had served with the regular British forces in the pre-revolutionary wars in America; while so serving the colonial troops had been subject to the operation of the Articles of War then in force in the British Army. Bearing this in mind the Congress, at the outbreak of hostilities in 1775, adopted the English articles of 1766, with some amendments and modifications to adapt them to the service of the revolutionary armies. With some immaterial modifications these Articles continued in force by a resolution of Congress which received executive approval on Sept. 29, 1789, until they were replaced by new articles in 1806.

The revision of 1806 was largely due to the efforts of Major General Alexander Hamilton, who had served as a member of the staff of General Washington during the War of the Revolution and was for that reason, entirely familiar with the defects of the revolutionary code. The Articles, as amended in 1806, continued in force for nearly three quarters of a century, having been made the subject of some minor revisions at the general codification of the laws in 1874. The articles regulating the constitution, composition and jurisdiction of courts martial have been revised recently by Congress upon the recommendation of the judge-advocate-general, with a view to a more efficient administration of military justice. Although now in need of some amendment and

modification, especially with a view to eliminate certain administrative requirements, the code now in force is generally regarded as being fully equal to the disciplinary needs of the military service.

See COURTS MARTIAL; ENLISTMENT, NAVAL AND MILITARY; MILITARY DISCIPLINE; MILITARY LAW; SOLDIERS AND SAILORS, LEGAL STATUS OF.

References: E. Samuels, *Law Military* (1816); C. M. Clode, *Military Forces of the Crown* (1869), I, ch. viii; A. F. Tytler, *Military Law* (1814); G. B. Davis, *Military Law* (1901), 339–540; Wm. Winthrop, *Military Law* (1896). GEORGE B. DAVIS.

ASHBURTON TREATY. See GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; OREGON; SLAVE TRADE.

ASIA, DIPLOMATIC RELATIONS WITH. The trade of the United States with Asia is almost as old as the republic itself. With the colonies of England, of France, and of the Netherlands, and formerly of Spain, American relations have been purely commercial and at no time of great importance. With the independent Asiatic empires, commercial relations together with the protection of American missionaries, have led to difficult questions.

In China till near the end of the nineteenth century the United States, contrary to its traditions elsewhere, usually acted in concert with the other powers; and, indeed, in the earlier days, with no great effort of its own, it obtained in the wake of England and France the advantages wrung by these powers from the government at Peking. In Japan on the other hand the Americans took the lead in opening up the country. In Korea they were the next power to Japan in obtaining a treaty (Shufeldt Treaty, 1882), in which among other things they assured the Koreans of an assistance that was not forthcoming when it was asked for a generation later. The United States was also the second western nation to make a treaty with Siam (Edmund Roberts Treaty, 1833), with which, at one time, it had a certain trade. Of recent years two American advisers there—E. H. Strobel and J. I. Westengard having no official connection with the United States Government—have done much valuable work in the direction of foreign affairs, and the modern organiaztion of the country.

The war with Spain made the United States an Asiatic power directly affected by whatever happens to its neighbors in the Far East. For instance, if Japan or China were to attack France in Annam, or Germany were to try to take over the Dutch Indies the United States might well feel more than a casual interest in the outcome. Even though we may well doubt the truth of the claim put forth by enthusiasts that Manila will be a second Hong Kong, a natural distributing port and centre of trade for all that part of the world, it is unquestionable that the acquisition of the Philippines has greatly augmented the political importance and influence of the United States in eastern Asia. It is now in a position to speak with authority. The presence of a considerable military force and the possession of a naval base in the Islands enables the Americans to act with a promptitude and effect that would otherwise be impossible for them, as was shown in the Boxer troubles of the year 1900, when troops from the United States itself could not have arrived in time to take part in the march on Peking. On the other hand, the United States by becoming an Asiatic power has assumed new burdens and responsibilities. In the Philippines, it has territory exposed to attack which it might have difficulty in defending in case of war. Some day, too, it may have to face the question whether its own Monroe Doctrine (*see*) is any more legitimate than the cry of Asia for the Asiatics.

See CHINA, DIPLOMATIC RELATIONS WITH; CHINESE IMMIGRATION AND EXCLUSION; FOREIGN POLICY OF THE UNITED STATES; INTERVENTION; JAPAN, DIPLOMATIC RELATIONS WITH; NEUTRALITY, PRINCIPLES OF; OPEN DOOR; WAR POWER, CONSTITUTIONAL.

References: W. E. Griffis, *America in the Far East* (1899); P. S. Reinsch, *World Politics as Influenced by the Oriental Situation* (1900), *Intellectual and Political Currents in the Far East* (1911); A. B. Hart, *Foundations of Am. Foreign Policy* (1901), ch. i; A. C. Coolidge, *U. S. as a World Power* (1908); A. T. Mahan, *Problem of Asia* (1900); J. B. Moore, *Digest of Int. Law*, (1906), V, 569; J. W. Foster, *American Diplomacy in the Orient* (1903); T. F. Millard, *Am. and the Far Eastern Question* (1909); A. R. Colquhoun, *Mastery of the Pacific* (1902); J. M. Callahan, *Am. Relations with the Pacific and the Far East* (1901); C. A. Conant, *U. S. in the Orient, the Nature of the Economic Problem* (1900). A. C. COOLIDGE.

ASIENTO TREATY. At the close of the War of the Spanish Succession in 1713 it was stipulated by the Asiento Treaty that British subjects should have the exclusive right to carry slaves to Spanish colonies in America for 30 years. Not less than 144,000 should be introduced at the rate of 4,800 per year. British subjects were also permitted to send one ship of 500 tons burden each year to the fair at Porto Bello. This privilege was abused and many times the amount of authorized goods introduced. Contentions over this and the efforts of the Spanish *guarda costas* to prevent it led to war in 1739, after a long diplomatic controversy. See SLAVE TRADE; SPAIN. References: G. Sselle, *La Traite Negriére; Contrats et Traites D'Assiento* (1906), II, 523–581; J. H. Latané, *Diplomatic Relations of U. S. and*

Span. Am. (1900), 19–20; W. E. B. Du Bois, *Suppression of the African Slave Trade* (1904). W. R. M.

ASSAY OFFICES. Assay offices as separate establishments from the mints were first established in Denver, Helena, and Boise, in order to aid miners who were remote from smelters and reduction works, in determining the value of the gold mined. The bulk of the gold production was formerly by placer mining, and carried on by small producers. In 1878, as a further service, these offices were empowered to buy bullion at its coinage value, and thus served as purchasing agencies of the mints. Later, offices were established at Carson, New York, Charlotte, Deadwood, Seattle, and St. Louis. It is now questioned by mint authorities whether, in view of the change in conditions of mining, from individual effort to corporate enterprise, and with more abundant facilities for transportation, it is necessary to continue the maintenance of such offices at government expense. See MINT, UNITED STATES. References: S. S. Pratt, *Work of Wall Street* (1912), 317–320; Director of the U. S. Mint, *Report* (*annual*); U. S. Secy. of the Treasury, *Report* (1910), 155. D. R. D.

ASSEMBLY, RIGHT OF. The right of assembly which is guaranteed in the Federal Constitution (Amendment I) and in various state constitutions is coupled with the guaranty of the right to petition the government for a redress of grievances; but it is not to be understood as limited to that object. Without doubt assemblies for social, political or religious purposes are protected by such guaranty against legislative prohibition unless attended with circumstances rendering the exercise of the right inimical to the public peace, security or welfare. The right to assemble may be restricted so far as necessary to prevent its being exercised to promote unlawful purposes or in such manner as to result in public inconvenience. The provision in the amendment to the Federal Constitution is a limitation only on the powers of the Federal Government. See BILLS OF RIGHTS; CONSTITUTION OF THE UNITED STATES, AMENDMENTS TO. E. McC.

ASSEMBLY, STATE. See STATE ASSEMBLY.

ASSESSED VALUATIONS, COMPARATIVE

Inevitable Variation.—The value officially set upon each kind of property for purposes of taxation at the legally prescribed rate is its assessed valuation. In practice it is impossible to make this valuation uniform for all classes of property in the same locality or for the same class of property in different localities. In the more advanced foreign countries, financial reforms have either eliminated the property taxes, or reduced them to a subordinate place in the tax system, or applied them to purely local use. Variations of assessed valuations in those countries, therefore, have a restricted practical significance, compared with the importance they assume in the United States.

Conditions in the United States.—In most of the American states, the general property tax is a main source of revenue for state and local governments; the constitution or laws commonly requiring that all property, not legally exempt, shall be taxed in proportion to its value. In practice this means a uniform tax rate for all kinds of property in the same political division—state, county, township or other district. While each county may have its own rate, all counties pay the same percentage on the assessed valuation for state purposes. Inequalities in assessed valuation, therefore, result in sharp discrimination against taxpayers whose property is chiefly of the more highly assessed classes and against those localities in which assessed valuations are relatively high. Hence the comparative assessed valuation of property in the United States is a matter of very great importance.

Causes of Unequal Assessments.—The main causes lie ultimately in the variety of forms of property and the practical difficulties of administration. The rise of corporate enterprise, development of banking and credit and accompanying economic changes have given rise to many forms of property, some of which are difficult to locate and many of which are difficult to assess. While it is easy to find and relatively easy to ascertain the value of most real estate, it is often in practice impossible to ascertain the ownership of railway shares or to fix the value of that part of a railway system which lies in one state or one county. Between a house or farm and a corporation franchise, there is every gradation of property for which valuation is required. While assessments vary between states, counties and districts, effective provisions to secure uniformity of results have not been devised. Assessors differ in efficiency and judgment, adopt different standards of value, and, because popularly elected, often incline to undervaluation with a view to reduce the share borne by their constituents in taxation for state or county purposes. As for the declaration of values by taxpayers, even more elastic standards result from interest and varying honesty. Where the

main burden of taxation for state and local purposes falls on property, every diminution of the just share of one property holder or locality adds an unjust burden to other property holders or localities. Concealment and undervaluation of personal property by owners seem to justify real estate owners in expecting and assessors in granting lower valuations on real estate. Low valuation for assessment in one district or county is deemed a justification for low valuations in other districts or counties. Hence the practical administration often results in a competition between owners of different classes of property and between different localities, by reducing valuations, to ease their own burdens at the expense of others. Infrequent assessments make slow and difficult the correction of errors and readjustment of valuations to correspond with changes in property values. All causes of unequal assessments are strengthened by the rapid increase in public expenditures, the natural and inevitable result of which is the imposition of heavier taxation.

Effects of Inequalities.—The results of unequal valuations are foreshadowed in the causes producing them. The immediate effect is a corresponding inequality of tax burdens on taxpayers, classes of property and localities. The tendency of an excessive tax being to suppress its source, heavily burdened taxpayers seek escape through concealment and false declaration of property; "intangible" property escapes the tax list, increasing the rate on other property classes; savings and investments avoid localities where tax rates are heavy, thus starving local commerce and industries; the collection of revenues becomes difficult and costly; injustices become cumulative; public and private morals are debased by the premium which inequalities of valuation place upon dishonesty.

Relation to Real Value.—Assessed valuations vary between nothing, where "intangible" property escapes the assessor, and the full value of the property. The nature of the variations is indicated by some typical data from the federal census for 1900. In that year, the proportion of assessed valuation to the estimated true value of all taxable property was, for the entire United States and for the particular states indicated:

	Real Property and Improvements, Per cent	Personal and Other Property, Per cent
United States	50.5	22.
New York	64.6	26.
Pennsylvania	57.5	4.3
Illinois	14.2	8.9
Connecticut	80.2	38.9
Minnesota	36.6	9.2
Wyoming	30.2	15.1

Thus, personal property is valued for assessment only two-fifths as high as real property in the whole country, and only one-thirteenth as high as real property in Pennsylvania. Similar variations in assessed valuation between counties are attested in the census and especially in reports of state tax commissions, where we still find that "assessments are unequal and unfair" between individuals, between assessment districts and between the counties of the state.

Remedies.—The efforts of tax commissions in the several states have for fifty years been directed mainly to secure a uniform valuation for all classes of property. All states, except New York, require a declaration by the taxpayer of personal property, in many states itemized, with severe penalties for misrepresentation. Other devices are: separate valuation of land and improvements thereon; valuation of unimproved land at not less than improved land of similar quality and situation; exemption or limited rates for "intangible" property; publicity of tax lists; equalization of value in county and state by official boards; use of separate taxes for state and local purposes; assessment of such property as railways by the "unit" standard; conventional standards for the assessment of certain classes of property which present special difficulties. Such devices, under efficient administration, have accomplished much. But qualified authorities agree that the only satisfactory remedy for the evils which are still manifest lies in a radical and thorough readjustment of the entire system of taxation.

See Assessment of Taxes, National, State, and Municipal; Assessments, Special; Budgets, State and Local; Tax Dodging; Taxation, Subjects of; Taxes, Equalization of; Wealth of the United States.

References: J. W. Chapman, *State Tax Commissions in the U. S.* (1897); C. C. Plehn, *Introduction to Public Finance* (3d ed., 1911), Pt. II, ch. viii; E. R. A. Seligman, *Essays in Taxation* (2d ed., 1897), ch. ii; U. S. Census Bureau, *Special Report on Wealth, Debt, and Taxation* (1907), 3–34, also Tables 11, 12, 15, 16, 19, 20, and Pt. III, 829–949; Reports of Tax Commissions in the several states, notably that by J. A. Fairlie on the *Taxation and Revenue System of Illinois* (1910); U. S. Industrial Commission, *Final Report*, XIX (1902), 1035–69; R. C. McCrea, "Taxation of Personal Property in Pa." in *Quart. Journal of Econ*, XXI (1907), 52–95; J. H. Hollander, "Taxation of Intangible Wealth in Md." in *ibid*, XXII (1908), 196–209; V. Curtis, "Tax Reform in Washington," *ibid*, XXIII (1909), 718–26; C. J. Bullock, "Separation of State and Local Revenues," *ibid*, XXIV (1910), 437–58; E. A. Angell, "Tax Inquisitor System in Ohio." in *Yale Rev.*, V (1897), 350–73; T. L. Sidio, "Ohio's First Step in Tax Reform, *ibid*, XVIII (1910), 413–17.

E. H. Vickers.

ASSESSMENT OF TAXES, NATIONAL, STATE, AND MUNICIPAL

Definition.—In the raising of revenue there are three distinct steps—levying, listing, or enrolling; assessment; and collection of a tax. The levy is a legislative function, in accordance with the principle that no taxes shall be imposed without the consent of the people. This is preëminently true of federal taxes; Congress names the rates which shall be collected through customs and internal revenue duties.

In the case of local revenue there is an apparent departure from the principle, in that the final rate on property is determined by the tax official after the valuation of the property has been made, the rate being fixed at an amount which, multiplied by the valuation, will produce the sum needed to meet the expenditures voted by the local legislative body. Often a maximum limit to the rate is set, either by the constitution or the legislature of the state, above which no taxes can be collected from property. Although this determination of a rate by an executive branch appears to controvert the principle of popular control, it is in reality only a delegation of the duty of making a mathematical computation, whereby the necessary taxes can be collected to cover what the legislative branch plans to expend.

Notwithstanding these limitations on the revenue officials, the latter possess great power in determining the valuation of the property to be taxed. In the case of property which is taxed under federal law, as, for example, imports, this valuation is known as the appraisal; in the case of real and personal property taxed for local purposes, as the assessment. Assessment, therefore, as far as American experience is concerned, has to do with the general property tax. As this is a local tax, there are to be found a great variety of systems depending upon state laws and even township regulations. As a rule the same assessment is used for local, county, and state taxes. The assessment is called in some states the duplicate, grand duplicate, general inventory, or grand list. In some states, where the county is the assessment district, cities are permitted to make separate assessments for local taxation.

Frequency.—In most states the assessment of real estate must be made annually or biennially. In six states—Vermont, North Carolina, South Carolina, Mississippi, Indiana and Illinois— it occurs but once in four years, and in Ohio every tenth year. In these exceptional cases, however, provision may be made for adding for improvements or subtracting for depreciation. The date of assessment is of importance. It generally falls in the winter or spring in order to avoid taxing the current harvest. In recent years an early date in the spring has been favored in some of the eastern states, in order to reach certain classes of the population who make use of summer homes in towns where tax rates are low (*see* TAX DODGING).

Inexact Methods.—Formerly, the general rule was to lump land and buildings together in one sum, and this still prevails in some states. A more approved method is to list land and improvements separately. It is obvious that in American cities, when fluctuations in value are often rapid and violent, it is difficult to secure precision of valuation. Owing to the decentralization of local government and the fact that English rather than continental European experience has been followed, we have not developed a cadastral system whereby the characteristics and uses of each parcel of land is intimately known and recorded. If sales of land frequently occur, the assessor may be guided by the selling value, but when land is let on long leases, or sales are infrequent, the assessor must rely upon his own judgment. Recorded sales have, however, to be interpreted with caution, for a misleading price may be inserted in the deed, or other considerations not named may enter into the transfer. As assessors in the United States are rarely expert, being paid low salaries, many errors are made. The results are well described in a report of the Wisconsin Tax Commission (1898). If the assessor is disposed to be fair, as between different taxpayers of his district, he will perhaps start with some former assessor's value of a particular parcel of land, or with his own arbitrary modification of such former value, assess the adjoining property by comparison with the first, the next by comparison with the second, and so on till the first standard is virtually lost sight of. The assessor speedily comes to have no standard, and his valuations soon show wide variation not only in respect to dissimilar properties and different classes of property, but even as to properties which differ only in ownership. In most assessment districts, arbitrary valuations for assessment purposes have become established.

Undervaluation.—A prevailing defect is undervaluation, largely due to the fact that assessors are local officials elected by their fellow citizens, to whom they therefore feel under obligations. In 1890, upon real estate, the value of which determined by the census was $35,711,000,000, the assessed value was only $18,956,557,000, or a little over one-half; in 1900 the real estate was assessed at but 44.4 per cent of its true value, and in 1904 at 48

per cent. These estimates are confirmed by the comparisons of valuations of real estate made by state commissions, with those turned in by local assessors, notably in Wisconsin and Minnesota. Some states expressly provide for undervaluation, as in Illinois, where the law requires assessment at only 20 per cent of the true value. In Iowa, property is valued for assessment at only 25 per cent of its actual value.

According to the returns made to the Bureau of the Census in 1908, of the 17 larger cities with a population of 300,000 or over, Boston, New York, Newark, N. J., Philadelphia, Baltimore and Detroit assess at true value; St. Louis, Cleveland and Cincinnati at 60 per cent; and Chicago at 15 per cent. Of the 29 cities having a population between 100,000 and 300,000, 16 assess at true value, and out of 47 cities with population between 50,000 and 100,000, 16 assess at true value. A policy of undervaluation of real estate is also often intentionally adopted in order to lessen the local quota to be contributed to the state tax. (*See* TAXES, EQUALIZATION OF.) Even county assessments, as in the South and West, have not proved a success, since the county board is made up of local representatives of the several towns and cities, each of whom is endeavoring to help his own district at the expense of others.

A further difficulty in securing equality lies in the withholding of land from the market for speculative purposes. Vacant land in the outskirts of cities is often surrounded by a suburban population, and yet may continue as long as it is not broken up by streets, to be returned as farm land, and assessed at values long since outgrown.

In the assessment of real estate in cities, several ingenious plans have been devised, especially the Somers System in Cleveland, and the St. Paul method, by which the center lots of a block are first appraised, and then the value of corner lots and of lots next to corners are determined by mathematical diagrams. Ratios are assumed to exist between the values of the corner and second lots, and of the middle lots with due reference to length and breadth and to the enhanced value of a frontage on a street where land is more valuable than on a side street. This is illustrated in the following table:

Ratio of Poorer Frontage to Better	Ratio of Corner Lot to Middle Lot	Ratio of Second Lot
.1	1.11	---
.2	1.14	1.02
.3	1.17	1.03
.4	1.22	1.03
.5	1.28	1.04
.6	1.36	1.05
.7	1.48	1.06
.8	1.60	1.08
.9	1.74	1.10
1.0	1.90	1.12

Personalty.—In the assessment of personal property, which includes not only goods but intangibles, the valuation must necessarily be even less precise than in that of real estate. Indeed it would not be inaccurate to state that taking the country as a whole there is no method whatever. Many states require by law that each taxpayer shall make a detailed return of the different kinds of personal property owned. This duty, however, in the great majority of cases is not observed, and the assessor is left to make out the return as best he can, with no power, however, to examine the taxpayer or other witnesses competent to form a judgment. Punitive measures, such as dooming (*see*) are rarely effective. In some states the assessor is required to visit each person liable to taxation and obtain a sworn statement as to his inventory; in New York, the assessor is simply under obligation to make diligent inquiry. The lists which are required to be filled out by the taxpayer vary in length and minuteness in different states. New York has but one item for personalty, while Indiana and Kentucky have 100 separate items; as a rule there are from 20 to 40 items. As a result of defective administration and a lax conscience on the part of taxpayers, in 1890 less than 25 per cent of the personal property of the entire country was assessed for revenue purposes. In New York the assessment was not over 14 per cent of its real value. In 1900 the proportion for the whole country was 22 per cent, and in 1904, 19.8 per cent. Authorities on taxation practically agree that the attempt to assess intangible property is a failure. According to H. C. Adams personal property is not reached by the present system. Even the most severe laws are futile to secure its listing (*Science of Finance* 1898, 445). Plehn writes that the assessment of personal property presents the greatest difficulties; the main trouble is to find whether the method of assessment can be made sufficiently effective to reach uniformly and equitably all forms of property, especially personal property; the answer of American experience is emphatically in the negative (*Introduction to Public Finance*, 1909, 274, 286). According to Seligman not only is the temptation for the taxpayer to convert his property temporarily into those forms which are legally exempt from taxation generally irresistible, but the law holds out inducements to practice fraud and sustains its commission. Whenever any pretense is made of enforcing the tax on personalty, and especially where the taxpayers are required to fill out under oath detailed blanks covering every item of their property, the inducements to perjury are increased so greatly as to make its practice universal (*Essays in Taxation*, 1897, 30), and Professor Bullock more recently observes that it is notorious that personal property largely evades taxation (*State and Local Taxation*, 1908, 129).

Remedies as to Personalty.—In view of these failures, various measures have been tried as: (1) Penalties for inaccurate returns. (2) Inquisitional search. In 1888 Ohio authorized the appointment of tax inquisitors, who were allowed a certain percentage, frequently 25 per cent of all taxes collected from property discovered by them and which had hitherto escaped assessment. Notwithstanding this inducement, the addition to the tax enrollment was but trifling. (3) Classification of property, thus making it possible to tax certain kinds of property at a lower rate than others so as to reduce the incentive to dishonest returns; (4) Publication of assessment rolls, a method formerly employed in Illinois and Rhode Island, and a few towns in Massachusetts and New Hampshire.

Centralization of Authority.—The most effective improvement thus far secured has been, however, through the establishment of state tax commissions. Particularly is this true in the assessment of realty. Such commissions in a few states have the power to revise the appraisals of local assessors in order to make the returns more closely approximate to true value. The results have been highly successful. In Michigan, for example, between 1891 and 1899, the assessed valuation of real estate showed an increase of only $29,000,000; between 1899 and 1905, with the establishment of a State Tax Commission, the increase was $400,000,000. In Wisconsin, the assessments increased from $505,000,000 in 1899 when the commission was organized, to $1,671,000,000 in 1906; and in West Virginia the assessed value of all property rose from $278,000,000 in 1904 to $875,000,000, as the result of establishing a permanent state tax commission. It has also been proposed that state officials be given the power to assess personalty, in order to check the practice of tax dodging. It is doubtful if intangible property could be reached on state lines by state officials; but the larger the unit the easier it would be to discover forms of property which involve registration, as mortgages, liens and security holdings in corporations. There is, however, an increasing tendency toward state valuation of the property of public service corporations, particularly railroads (*see* CORPORATIONS, TAXES ON).

States differ in providing remedy for inaccurate assessment. In Connecticut the selectmen of the town constitute the reviewing authority; in Massachusetts, the assessors sit as a board of appeal; in New Jersey there is a separate board known as the Commission of Appeal. As a rule appeals can be taken only to the courts.

See ASSESSMENTS, SPECIAL; ASSESSORS OF TAXES; BETTERMENTS, ASSESSMENTS FOR; TAXATION, EXEMPTION FROM; TAXATION, MORTGAGE; TAXATION, SUBJECTS OF; TAX DODGING; TAX, INCOME; TAX, LAND AND REAL ESTATE; TAX, PERSONAL PROPERTY; TAXES, DOOMING OF; TAXES, EQUALIZATION OF; VALUATION, COMPARATIVE.

References: E. J. Boyle, "Methods of Assessments as Applied to Different Classes of Subjects" in *State and Local Taxation*, First Nat. Cnference of Tax Assoc., *Addresses and Proceedings* (1908), 128–167; C. C. Plehn, "Revenue Systems of State and Local Governments," in U. S. Bureau of Census, *Reports on Wealth, Debt and Taxation* (1907), 626–628; *Introduction to Public Finance* (3d ed., 1909), 265–275; H. C. Adams, *Finance* (1898), 434–449; E. R. A. Seligman, *Essays in Taxation* (1897), 24–32; C. J. Bullock, *Selected Readings in Public Finance* (1906), 202–253, experience of different states; H. L. Lutz, "Somers System of Realty Valuation" in *Quart. Journ. of Econ.*, XXV, (1910), 172; Int. Tax Conference, *State and Local Taxation* (annual volumes since 1908); F. Walker, "Double Taxation' in *Col. Stud. Hist. Econ. & Pub. Law*, V (1895), No. 1, 44–88; R. T. Ely, *Taxation in Am. States and Cities* (1888), ch. xiii; A. B. Hart, *Manual* (1908), § 220 (bibliography).

DAVIS R. DEWEY.

ASSESSMENTS FOR PARTY PURPOSES. The term assessments is applied to contributions levied by party committees upon the holders of appointive offices in the civil service. Party committees likewise make assessments upon candidates for elective offices. This method of raising revenue to meet the expenses incident to political campaigns is noticeable as early as 1840. Not until after the Civil War, however, was the system fully developed. Since then officeholders have been made to feel that they owed their appointments to the party and that it was their duty to share in the expenses of party support. The exactions were often high, amounting to ten per cent or more of the salary of the officer. The penalty for nonpayment was threatened or actual removal from office. This demand was always looked upon as an abuse of party power and influence. President Grant and President Hayes each attempted to rid the civil service of the objectionable practice. Not, however, until Congress had passed laws making the solicitation of funds from public officers a criminal offense was relief furnished. But it has persisted to a limited extent in the face of hostile legislation. In all places where political parties nominate and elect public officers it is customary for candidates to make contributions to help pay campaign expenses. This custom does not necessarily involve a party assessment, but as the spoils system became fully developed and nominations came to be controlled by a party boss, candidates for elective office were definitely assessed as regularly as the holders of appointive office. These exactions were large, sometimes amounting to more than the salary

for the entire term of service. As the party revenues have been diminished by protecting appointees from exaction, assessments upon candidates have increased. This form of abuse is not so easily reached by legislation. See PARTY FINANCE; PATRONAGE; PUBLICITY OF POLITICAL EXPENDITURES; SPOILS SYSTEM. References: J. A. Woodburn, *Political Parties and Party Problems* (1903), ch. xviii; M. Ostrogorski, *Democracy and Political Parties* (1902), II, 143; J. W. Jenks, "Money in Practical Politics" in *Century*, XLIV (1892), 940–45; R. C. Brooks, *Corruption in Am. Politics and Life* (1910), 248–250. JESSE MACY.

ASSESSMENTS, SPECIAL. Special assessments or betterment taxes, as they are frequently called, are charges for improvements which are considered to bring a special benefit upon a piece of real estate over and above the benefit derived from the community at large; they are authorized for public purposes only, and are imposed in proportion to the particular benefits supposed to be conferred. In this respect it is distinguishable from a tax, which is a contribution to a general fund irrespective of individual benefits. The principle, borrowed from English law, had its earliest development in New York, and was applied during the colonial period. In some states the courts have been unwilling to uphold the special assessments. It has been urged, for example, that special assessments take property without due process of law, and that they violate the constitutional provisions securing uniformity of taxation.

It is now universally recognized that special assessments are subject to different rules of interpretation from taxes. A special assessment is levied only on property, and is not a personal liability of the taxpayer; a tax is a continuing burden, while an assessment is for a particular occasion to accomplish a particular purpose, and "dies with the passing of the occasion and the accomplishment of the purpose."

The most important objects for which special assessments are levied are the opening up of new streets, construction of side-walks, pavements and sewers, and sanitary improvements, such as the building of levees and drainage of swamps. In the case of sidewalks, pavements and sewers the expense is generally apportioned by frontage or land area within certain defined limits on each side of the improvement.

The use of this special assessment in place of a general tax frequently involves delicate questions of justice, for it may be difficult to determine whether the greater benefit is general or special; if general, the person assessed may be unduly burdened. Often the expense is divided, one half, for instance, being placed on the public by a tax and one half on the parties to be assessed; frequently the payment of the assessment may be made in installments extending over a period of years, the person assessed meanwhile paying interest on the unpaid portion of the assessment. The use of this principle has been an important factor in the laying out of towns, particularly in the West, where the community was not prepared or able to undertake extension of streets by the general process of taxation. A large amount is collected through this agency. In 1908 the receipts from special assessments of cities having a population of 30,000 or over were $51,311,000.

See ASSESSMENT OF TAXES; REVENUE, PUBLIC, SOURCES OF; PUBLIC WORKS, NATIONAL, STATE AND MUNICIPAL.

References: U. S. Census Bureau, *Statistics of Cities* (1908, 1910), 198–200; V. Rosewater, *Special Assessments* (2d ed., 1898), legal principles, history and bibliography; E. R. A. Seligman, *Essays in Taxation* (2d ed., 1897), 282–304, 340–357; T. M. Cooley, *Law of Taxation* (3d ed., 1903).

DAVIS R. DEWEY.

ASSESSORS OF TAXES. Formerly it was the uniform custom to elect assessors by popular vote, and in some towns and even in large cities it still remains the practice. Obviously, it has its disadvantages, for persons not experienced in valuing real estate may be elected, and the assessors are dependent upon popular favor in a service which demands impartial and firm judgment. In many of the larger cities the appointment of assessors is now placed in the hands of the mayor. In a few states the assessors are county officials. See ASSESSMENT OF TAXES. D. R. D.

ASSOCIATED PRESS. The principle of coöperation in news-gathering was first used before the Civil War by the New York city papers which realized that each was paying a large sum for news that was accessible to all. Provision was made for a joint agency, through which each paper turned over to all the members any news it might receive. Out of this grew the New York Associated Press. Papers west of the Allegheny Mountains also established a Western Associated Press (incorporated 1865) and there were other minor associations. These formed a general alliance centered in the New York Associated Press. In 1892 a general association was formed, taking the form of a stock corporation, the stockholders of which, being newspaper proprietors, could hold not more than eight shares apiece. In operation it was, however, a mutual organization, the possession of stock not being essential to membership and news service. The stock was very widely distributed and a large share of the members were holders of stock with a voice in the direction of the company. In 1900 it seemed best to abandon the stockholding feature and to substitute for the stockholding corporation a mutual association for

all newspaper proprietors entitled to receive the press reports. This was done and the present organization was effected under the laws of the state of New York May 22, 1900. Membership in the association is held by proprietors or executive officers of corporations owning the newspapers entitled to the report, but only as representing their papers. The revenues of the association are collected from the members by weekly assessment, pro-rated among them according to the cost and value of service.

At present there are about 860 members. For its more important service The Associated Press has its own leased wires which form a network across the continent from St. John, N. B., to Seattle, Wash., and San Diego, Cal., and from Duluth, Minn., to New Orleans, Galveston and the City of Mexico. The total mileage of this leased wire system is approximately: day wires 22,000 miles, night wires 28,000. From various points along the trunk lines the report is sent to interior cities. Each of the members engages to contribute the news of his immediate vicinage to The Associated Press. The annual revenues of The Associated Press, which are derived from assessments levied upon its members, approximate $3,000,000, while the number of words daily received and transmitted at each of the more important offices is over 50,000 or the equivalent of thirty-five columns of the average newspaper.

Melville E. Stone.

ASSOCIATION (1774). The first Continental Congress sought to bring the British to terms by suspending trade with them, and to enforce the suspension of trade an Association was advised which was to include all "friends of America." After declaring that the colonies would not import or consume tea or other British goods (after December 1, 1774), nor export American goods to Great Britain or the West Indies (after September 1, 1775), a provision was made for committees in every county, town or city to enforce this agreement. These committees should attentively observe the conduct of all persons, and should publish in the gazette the name of any person violating the Association. See Revolution, American, Causes of; Continental Congress. References: W. Macdonald, *Seleet Charters* (1899), 356–367; G. E. Howard, *Preliminaries of the Revolution* (1905), 294–306.

C. H. Van T.

ASSOCIATION, RIGHT OF. See Societies, Legal Status of.

ASSUMPTION OF RISK. The doctrine that in case of accident the workman is presumed to understand the perils and to exercise care accordingly. See Employers' Liability.

C. F. G.

ASSUMPTION OF STATE DEBTS. See Hamilton, Alexander.

ASYLUM, INTERNATIONAL. **Asylum in Legations.**—Formerly, diplomatic agents claimed the right to grant asylum to fugitives seeking to escape from local authorities, resting the right upon the so-called extraterritoriality of the official residence. Since the middle of the seventeenth century the claim to exercise this right has been modified. The legation is still considered as exempt from local jurisdiction and as an asylum for members of the official and personal household of the diplomatic agent. While others may obtain for a time immunity from arrest by entering a legation, it is now held, except in states where the government is insecure, or where revolutions or other uprisings are frequent, that asylum should not be granted in legations, but on demand of the proper authorities fugitives should be turned over to local officials. The United States has tried to bring about an agreement that asylum shall not be granted in any state, but the practice in certain states outside of Europe and the United States has not supported this position. So recently as 1895 the British Ambassador at Constantinople gave asylum to the deposed grand vizier. There are many instances of the grant of asylum in legations in Asia and in the South and Central American states where the political conditions are unsettled. Asylum for other than political offenders is rarely granted even in these states. The United States instructs its diplomatic officers to the effect that "The privilege of immunity from local jurisdiction does not embrace the right of asylum for persons outside of a representative's diplomatic or personal household." In some cases treaty provisions regulate the grant of asylum as in Article VII of the treaty of 1856 between the United States and Persia, "The Diplomatic Agent or Consuls of the United States shall not protect secretly or publicly the subjects of the Persian Government, and they shall never suffer a departure from the principles here laid down and agreed to by mutual consent."

Asylum in Consulates.—As mentioned in the treaty of 1856 the consulate is not to serve as an asylum for fugitives from local authorities. Other treaties, as Article VI of the treaty with Italy of 1871, provide as to consular offices, "These offices, however, shall never serve as places of asylum." In certain oriental and South American states consulates sometimes afforded asylum in extreme cases. The United States and British consulates afforded asylum to a large number of refugees in the Dominican revolution in 1903–1904 when threats were made that political prisoners would be shot.

Asylum on Ships.—(1) Asylum on private ships is not now regarded as permissible, and

criminals on board a private vessel even in transit are considered as amenable to the local jurisdiction for crimes committed before embarkation.

(2) Asylum on public ships is in some respects analogous to asylum in legations though the jurisdiction of a public ship in matters of internal economy is exclusive in the state to which the ship belongs. The attitude of the United States is shown in its navy regulations as follows:

> The right of asylum for political or other refugees has no foundation in international law. In countries, however, where frequent insurrections occur, and constant instability of government exists, usage sanctions the granting of asylum; but, even in the waters of such countries, officers should refuse all applications for asylum, except when required in the interests of humanity, in extreme or exceptional cases, such as the pursuit of a refugee by a mob. Officers must not directly or indirectly invite refugees to accept asylum.

See ALIENS; CITIZENSHIP IN INTERNATIONAL LAW; EXPULSION; EXTRATERRITORIALITY; INTERVENTION; NEUTRALITY, PRINCIPLES OF; SOUTH AMERICA, DIPLOMATIC RELATIONS WITH.

References: G. G. Wilson, *Int. Law* (1910), 118, 172, 188, *Regulations of 1905*, No. 308; W. E. Hall, *Int. Law* (1909), 189, 194; R. Phillimore *Int. Law* (1879–1888), II, 176, 210; J. Westlake, *Int. Law* (1908), 263–273; J. B. Moore, *Digest of Int. Law* (1906), II, (§§ 295–304, II, § 307; Wildenhus' Case, 120 *U. S.* 1.

GEORGE G. WILSON.

ASYLUMS FOR DEFECTIVES. See DEFECTIVE CLASSES, PUBLIC CARE OF.

ATTACHE. Attachés whose functions are in some degree described by their titles may be included in the suite of a diplomatie agent. The simple term "attaché" is sometimes used when a person not having prescribed duties is included in the official personnel of an embassy. Military and naval attachés usually reside at the most important posts. According to the United States practice a "military attaché is, in a sense, an aide-de-camp to the ambassador or minister to whose embassy or legation he is appointed." The naval attachés occupy a similar position. Both are supposed in an honorable manner to learn and to forward to their government information in regard to the respective arms of the service to which they belong. They are often invited by the foreign states to witness military and naval manoeuvres and are expected to report the results of their observations. Commercial, financial, interpreter, student, and technical attachés of different descriptions are appointed as occasion requires. See DIPLOMACY AND DIPLOMATIC USAGE; DIPLOMATIC SERVICE. **References:** J. W. Foster, *Practice of Diplomacy* (1909), 209–210.

G. G. W.

ATTAINDER. The extinction of civil rights and capacities in consequence of judgment of death or outlawry for treason or felony. At common law attainder involved forfeiture of property, and corruption of blood, by which was meant incapacity to inherit, or to pass property by inheritance to others, incapacity to testify in a court of law, to sue or be sued. In the United States there is no forfeiture of property, or corruption of blood except during the life of the person attainted (Const. Art. III, sec. iii, ¶ 2). Forfeiture of property by attainder was similarly limited in England by statute (3 and 4 Wm. IV, c. 106).

H. M. B.

ATTAINDER, BILL OF. In English law the term "attainder" (*see*) has been used to indicate the consequences of the conviction of a capital offense, among such consequences being a forfeiture of the attainted person's entire property and estate to the Crown and the extinction of all his civil rights. Bills of attainder enacted by Parliament involved the same consequences to the person described. Bills of pains and penalties were similar in character but provided punishment less than capital. The prohibition of the passage of any bill of attainder by Congress or by any state (Const. Art. I, Sec. ix, ¶ 3, Sec. x, ¶ 1) is construed to include also bills of pains and penalties. The manifest objection to bills of this character was that they imposed criminal punishment without trial and conviction according to the forms of law; and the abuses necessarily incident to such exercise of authority on the part of Parliament and during the struggle for independence on the part of the colonial legislatures, dictated the constitutional prohibition as a necessary protection to individual rights. See PAINS AND PENALTIES, BILLS OF. **References:** T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898) 310–312; *Ex parte* Garland, 4 *Wall.* 333; J. R. Tucker, *Constitution of the U. S.* (1899), II 652–654.

E. McC.

ATTORNEY. In the broad sense, one who is authorized to act for another as his agent or substitute. An attorney at law is an advocate or counsel, employed to prepare, manage and try cases in court, or to advise concerning or manage the legal business of others, known as his clients. One may not practice in the courts until he has been "admitted to practice," by order of court. In the United States the conditions of admission and the educational, and other qualifications required are determined by the courts, or the legislature, or in some states by the complementary action of both courts and legislature. Attorneys are said to be officers of the court, but this is true only, in the limited sense, that they may practice only by license of the court, are subject to its discipline, and may be required by the court to perform certain duties, such as defending poor persons charged with crime.

An attorney in fact is one who is given authority by his principal to perform a particular act not of a legal character. H. M. B.

ATTORNEY GENERAL OF THE UNITED STATES. The Attorney General is the legal adviser of the President and the heads of departments, interpreting at their request the statutes under which they act. He also appears at times in the Supreme Court, and rarely in the inferior courts, in such cases as seem to him to require his personal attention. The office was created in the judiciary act of 1789, and while the Attorney General was from the beginning a member of the President's Cabinet, residence at the seat of government was not, until 1814, deemed a necessity. For him are reserved questions involving the interpretation of the Constitution; but questions of lesser import may be referred to subordinates, such decisions being subject, however, to his approval. The published opinions of the Attorney General constitute a body of precedents of a quasi-judicial character which come to have an authority similar to the decisions of courts of justice. He does not determine questions of fact; his decisions are not subject to review; he does not answer hypothetical questions, or questions not concerning the work of the department seeking his advice; he does not pass upon questions in controversy before the courts; and while he furnishes information to Congress, he does not furnish opinions to that body or to its committees.

As the chief advocate of the Government the Attorney General supervises all actions and suits in which the Government is a party or in which it is interested; and he may appear in suits between states where the United States has an interest, for the purpose of introducing evidence or argument, without making the Government a party. Although suits against the United States are not allowed as a matter of right, yet special provisions for the prosecution of particular classes of claims is made by the creation of special courts or by laws regarding minor claims, and over such suits he has general jurisdiction. The Attorney General also has administrative supervision over clerks and marshals of the United States courts and over the penal and reformatory institutions of the Government; and he acts as adviser to the President in pardon matters. It is customary for the President to refer to him certain classes of bills after they have been passed by Congress and before they are signed; and also to consult him in making appointments of judges and officers of the courts.

Increase in Scope of the Office.—The scope of the Attorney General's duties and the power of his office depend largely on the nature of the questions which arise during the administration of which he is a part, and also in large degree on the strength of his character and the measure of confidence reposed in him by the President and the heads of departments. The Sherman Anti-Trust law, as finally made reasonably certain by the decisions of the courts, has increased enormously the work of the Attorney General in selecting lines of activity and directing the prosecutions instituted under that statute. The Hepburn and Elkins acts forbidding discriminations and rebates by common carriers, have added their quota to the number of prosecutions. For twenty years and more, Congress has been enacting laws to prevent evils which have developed simultaneously with the rapid expansion of business and the tendency to consolidate means for the production and distribution of the necessaries of life. These statutes have been tested in the courts, and have been revised so as to make them effective; and public opinion has demanded their enforcement, until nearly the whole industrial system is under indictment. The wide range of prosecutions and the number of actions instituted, when taken in connection with the manifest determination of Congress to enact additional legislation directed against monopoly and special privileges, make it certain that the Attorney General's office must become increasingly important in directing the channels in which the business of the country will be permitted to flow. During 1910, the number of judgments in civil suits rendered in favor of the United States was 1,866 to 254 against them; in criminal suits, there were 9,451 convictions and 1,495 acquittals. In 1911, the activity of the public prosecutor increased, and the amount of collections from suits and compromises was multiplied fourfold. The decisions in the Standard Oil and the Tobacco cases have shown, however, that other means than existing courts and the department of justice are needed to work out the problems presented by the enforced changes to be made in business methods. A new court or commission may be found necessary for the task. The recent development of the duties of the Attorney General in relation to industrial affairs is the most striking fact in the history of that office.

See Justice, Department of; Executive Department.

References: Attorney General's Reports, 1910 and 1911, *American Year Book for 1911*, 169, and year by year; Story and Emerson, *Memoirs of E. R. Hoar* (1911); J. A. Fairlie, *National Administration* (1905); H. B. Learned, *The President's Cabinet* (1911).

Charles Moore.

ATTORNEY GENERAL, STATE. This officer has the two functions of chief law adviser of the state and head of the legal department.

Choice, Tenure, and Compensation.—In more than forty states the attorney general is now

chosen at large by popular vote. In the other states he is chosen either by the governor alone, or by the governor with the consent of the senate or council, or by joint ballot of the two branches of the legislature. There is no prevailing length of tenure for the attorney general, the term varying from one to four years but the tendency is towards the longer period. In several instances the term of the attorney general does not coincide with that of the governor.

In addition to removal by impeachment, provision is made in a few states for the removal of the attorney general by special process. Thus, in New York, he may be removed by a two-thirds vote of the senate, upon the recommendation of the governor. In no case can he be ousted from office except for cause and after having received notice of the charges against him and an opportunity of entering a defense.

In addition to the fixed salary which he receives from the state, the attorney general still receives fees in a few states.

Powers, Duties and General Relations.—Since the legislatures have not, as a rule, undertaken to enumerate all his powers and duties, the attorney general still derives some powers from the common law; but most of them depend upon constitutional or legislative enactment. His powers and duties may be classified as follows:

(1) Forensic. He appears in the federal or state courts in all cases in which the state is a party or interested, for the prosecution of offenders against state law and to defend actions brought against state officials in their official capacity. Under certain limitations, he may enter a *nolle prosequi* and thus discontinue the proceedings.

(2) Advisory. It is his duty, when requested, to render opinions to the governor, legislature, heads of departments and other state officers upon legal questions arising in connection with their official duties.

(3) Quasi-judicial, such as passing upon applications for suggestions to the courts that certain extraordinary writs be issued.

(4) Miscellaneous, such as serving upon various state boards.

State boards and commissions have frequently been authorized to employ special counsel to conduct their legal proceedings. With the growth of such commissions, the legal business of the state became disintegrated, and conflicts frequently arose between the attorney general and the special counsel of state boards. Within the last few years, therefore, many states have provided by constitutional or statutory provision that all the law business of the state shall be conducted by the attorney general, or under his direction. It results that as new activities are undertaken by the states and new commissions created, the work and importance of the attorney general's department increase correspondingly. In New York the governor has power irrespective of the attorney general, to designate a person to investigate any state department or institution.

Relations with Local Prosecuting Attorneys. The conduct of the state's legal business in the localities is entrusted to local officers usually called district attorneys, prosecuting attorneys, or state's attorneys. In the large majority of states, this officer is elected by the people of the county or other local districts into which the state may be divided for this purpose—and there is no such supervision by the central official as in the similar service of the United States. His term of office is usually either two or four years. In no case can he be ousted from office until certain formalities of a judicial or quasi-judicial character have been complied with. In some states the attorney general may institute *quo warranto* proceedings against a delinquent prosecuting attorney in the supreme court of the state. Perhaps the most summary methods of removal exist in New York and Minnesota, where the governor alone may remove him after notice of the charges against him and opportunity of defense. This power of the governor is executive and not judicial, and his decision is not reviewable by the courts.

The attorney general advises the prosecuting state and county and prosecutes all actions, civil and criminal, in the courts of his county, in which the state or county is a party or interested. He also gives his opinion to any officer of the county upon legal questions relating to the duties of his office. He attends the grand jury for the purpose of giving them legal advice, examining witnesses, and drawing up indictments. His power of entering a *nolle prosequi* in a criminal case has, in a number of states, been considerably curtailed, and, in South Dakota, entirely abolished.

The attorney general advises the prosecuting attorneys as to their duties, but he usually has little power of actual direction over them. Friction and differences of opinion frequently arise between them with regard to questions connected with the enforcement of state law in the localities. A remedy for this condition has been found in New York by the removal of the local prosecuting attorney from office; and in Pennsylvania by a practical supersession of the local officers by officers of central appointment and control.

See Attorney General; District Attorney; Governor; Heads of State Departments; Judiciary and Judicial Reform; Law, Administrative; Law, Criminal, Reform of Procedure; Prosecuting Attorney.

References: J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906), 100–106, J. H. Finley and J. F. Sanderson, *Am. Executive and Executive Methods* (1908), 111–115.

J. M. Mathews.

ATTORNEYS GENERAL. Following is a list of Attorneys General of the United States from 1789 until March, 1913:

1789 (Sept. 26)—1794 (Jan. 27) Edmund Randolph.
1794 (Jan. 27)—1795 (Dec. 10) William Bradford.
1795 (Dec. 10)—1801 (Mar. 5) Charles Lee.
1801 (Mar. 5)—1805 (Aug. 7) Levi Lincoln.
1805 (Aug. 7)—1807 (Jan. 20) John C. Breckenridge.
1807 (Jan. 20)—1811 (Dec. 11) Caesar Rodney.
1811 (Dec 11)—1814 (Feb. 10) William Pinkney.
1814 (Feb. 10)—1817 (Nov. 13) Richard Rush.
1817 (Nov. 13)—1829 (Mar. 9) William Wirt.
1829 (Mar. 9)—1831 (July 20) John M. Berrien.
1831 (July 20)—1833 (Nov. 15) Roger B. Taney.
1833 (Nov. 15)—1838 (July 5) Benjamin F. Butler.
1838 (July 5)—1840 (Jan. 11) Felix Grundy.
1840 (Jan. 11)—1841 (Mar. 5) Henry D. Galpin.
1841 (Mar. 5)—1841 (Sept. 13) John J. Crittenden.
1841 (Sept. 13)—1843 (July 1) Hugh S. Legaré.
1843 (July 1)—1845 (Mar. 6) John Nelson.
1845 (Mar. 6)—1846 (Oct. 17) John Y. Mason.
1846 (Oct. 17)—1848 (June 21) Nathan Clifford.
1848 (June 21)—1849 (Mar. 8) Isaac Toucey.
1849 (Mar. 8)—1850 (July 22) Reverdy Johnson.
1850 (July 22)—1853 (Mar. 7) John J. Crittenden.
1853 (Mar. 7)—1857 (Mar. 6) Caleb Cushing.
1857 (Mar. 6)—1860 (Dec. 20) Jeremiah S. Black.
1860 (Dec. 20)—1861 (Mar. 5) Edwin M. Stanton.
1861 (Mar. 5)—1864 (Dec. 2) Edward Bates.
1864 (Dec. 2)—1866 (July 17) James Speed.
1866 (July 17) J. Hubley Ashton (Ass't. Att'y. Gen); acting.
1866 (July 23)—1868 (Mar. 13) Henry Stanberry.
1868 (Mar. 13) Orville H. Browning (Sec. Int.)
1868 (July 15)—1869 (Mar. 5) William M. Evarts. *ad int.*
1869 (Mar. 5)—1870 (June 23) Ebenezer R. Hoar.
1870 (June 23)—1871 (Dec. 14) Amos T. Ackerman.
1871 (Dec. 14)—1875 (Apr. 26) George H. Williams (recommissioned Mar. 1, 1873).
1875 (Aug. 26)—1876 (May 22) Edward Pierrepont.
1876 (May 22)—1877 (Mar. 12) Alphonso Taft.
1877 (Mar. 12)—1881 (Mar. 5) Charles Devens.
1881 (Mar. 5)—1881 (Dec. 19) Wayne McVeagh.
1881 (Mar. 7) Samuel F. Phillips (Solicitor Gen'l); *ad int.*
1881 (Nov. 12) Samuel F. Phillips (Solicitor Gen'l); *ad int.*
1881 (Dec. 19)—1885 (Mar. 6) Benjamin H. Brewster.
1885 (Mar. 5)—1889 (Mar. 5) Augustus H. Garland.
1889 (Mar. 5)—1893 (Mar. 6) William H. H. Miller.
1893 (Mar. 6)—1895 (June 8) Richard Olney.
1895 (June 8)—1897 (Mar. 5) Judson Harmon.
1897 (Mar. 5)—1898 (Jan. 25) Joseph McKenna.
1898 (Jan. 25) John K. Richards (Solicitor Gen'l); *ad int.*
1898 (Jan. 25)—1901 (Mar. 5) John W. Griggs.
1901 (Mar. 5)—1901 (Apr. 5) John W. Griggs (recommissioned).
1901 (Apr. 1) John K. Richards (Solic. Gen'l); *ad int.*
1901 (Apr. 5)—1904 (July 1) Philander C. Knox.
1904 (July 1)—1906 (Dec. 12) William H. Moody (recommissioned March 6, 1905).
1906 (Dec. 12)—1909 (Mar. 5) Charles J. Bonaparte.
1909 (Mar. 5)—1913 (Mar. 4) George W. Wickersham.
1913 (Mar. 5) James C. McReynolds.

See Attorney General; Cabinet of the President; Justice, Department of.

References: M. L. Hinsdale, *President's Cabinet* (1911); R. B. Mosher, *Executive Register of the United States* (1903).

Albert Bushnell Hart.

AUDIT OF PUBLIC ACCOUNTS. See Public Accounts.

AUDITOR, COUNTY AND TOWN. In about one-third of the American states, county auditors have been established as regular county officers. They are of most importance in the north central states, where elective county auditors are provided in Ohio, Indiana, Minnesota, Iowa and South Dakota. These officials keep accounts of receipts and expenditures, prepare tax lists and issue warrants for county expenditures; and sometimes have duties in relation to the assessment of property for taxation. County auditors are also found regularly in several other states—New Jersey, South Carolina, Mississippi, Nevada, Washington and California—and in the larger counties of some others—New York, Pennsylvania, Michigan, Kansas and Utah. In many states the boards of supervisors or county commissioners adjust claims and accounts; the county clerks acting to some extent as accountants and auditors. Towns and township accounts are usually audited by the boards of selectmen in New England, and the town boards in the middle Atlantic and north central states. A centralized system of auditing and examining county and town accounts has been established in a number of states west of the Mississippi River (Minnesota, Wyoming, Kansas, Nebraska and the Dakotas) and also in Ohio and partially in New York and Massachusetts. See Auditor, State; Expenditures, State and Local; Finance, Local Systems of; Public Accounts; Treasurer in Local Government. Reference: J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906), chs. vii, xv.

J. A. F.

AUDITOR OF THE TREASURY. There are now six auditors in the Treasury Department, one for the accounts of the Treasury Department itself and one each for those of War, Interior, Army, Postoffice, and State and other departments. To these officers are referred all accounts against the Government to determine that they are submitted in the proper form. From their findings an appeal may be made to the Comptroller of the Treasury (*see*). See Audit of Public Accounts; Public Accounts; Treasury Department. Reference: E. I. Renick, "Control of National Expenditures" in *Pol. Sci. Quart.*, VI (1891), 248–281.

D. R. D.

AUDITOR, STATE. Auditors are provided for in most state constitutions. They are required to audit the public accounts and to perform such other duties as may be prescribed by law. Auditors are very often members of state executive boards (*see*), such as board of pardons, board of equalization, board of education, board of taxes, etc. Auditors are usually elected. Some states (Colorado, Penn-

sylvania and Oklahoma) prohibit two terms in succession. In Virginia, Tennessee, and New Jersey, the election is by joint ballot of the legislature. See EXPENDITURES, STATE AND LOCAL; HEADS OF STATE DEPARTMENTS; PUBLIC ACCOUNTS. References: A. B. Hart, *Actual Government* (1908), § 68; F. N. Thorpe, *Federal and State Constitutions* (1909); C. A. Beard, *Am. Gov. and Politics* (1910), ch. xxiv.

T. N. H.

AUSTRALIA, FEDERAL ORGANIZATION OF. The Commonwealth of Australia consists at present of six states, denominated Original States—New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania. These six states had grown up as separate colonial establishments, each with responsible government. The need for union was severely felt, but nearly twenty years elapsed between the meeting of the first Australasian convention of appointed delegates in 1883 and the final success of federation. An elected convention (1897) drafted a constitution which was submitted to a referendum. The measure failed of adoption in New South Wales, was revised in a conference of premiers (January 1899) and successfully passed the referendum. It was then embodied in an act of the Imperial Parliament, the Commonwealth of Australia Constitution Act (July 9, 1900) and was proclaimed January 1, 1901. The Government is vested in a governor general, a senate and a house of representatives. Six senators are elected by general ticket from each state, for the term of six years. The membership for the house of representatives stands—New South Wales, 27; Victoria, 21; Queensland, 10; South Australia, 7; Western Australia, 5; Tasmania, 5. There is a single franchise for both houses of the legislature, on the basis of universal adult suffrage. State governors are appointed by the Crown and deal directly with the British colonial secretary. The king may disallow federal legislation. In the division of jurisdiction the residuary power remains with the states. The powers of the commonwealth are partly exclusive and partly concurrent with those of the states. Exclusive powers extend to naval and military defence, customs and excise, etc. The concurrent jurisdiction includes trade and commerce, taxation, copy-rights, marriage, divorce, etc. The judicial power of the commonwealth is vested in the federal supreme court, called the high court of Australia, already established, and such other federal courts as may be created by the Parliament. See FEDERAL STATE. References: *Commonwealth of Australia Constitution Act* (1900); W. H. Moore, *Constitution of the Commonwealth of Australia* (1902); J. A. Cockburn, *Australian Federation* (1901); H. B. Higgins, "Australian Federation Act" in *Contemporary Review*, LXXVII (1900), 480–490; H. M. Posnett, "The Fed. Constitution of Australia" in *Fortnightly*, LXXV (1901), 969–988.

STEPHEN LEACOCK.

AUSTRALIAN BALLOT. See BALLOT, AUSTRALIAN.

AUSTRIA-HUNGARY. The union of Austria and Hungary dates from 1526, when Louis II, king of Hungary and of Bohemia, perished in the disastrous battle of Mohács. The Turks, after their victory in this battle, overran a large part of Hungary, and in order to obtain a ruler strong enough to cope with the situation, Ferdinand I, archduke of Austria, was chosen as king of both Hungary and Bohemia. Neither the Hungarians nor the Bohemians intended to merge themselves with the Austrian territories, and they insisted that their rights as independent states should be respected. In their view the union with Austria was a mere personal union—they had the same ruler, but otherwise were to preserve their position as separate and independent states.

But the Hapsburg dynasty naturally wished to consolidate its dominions, and almost from the first an effort was made to reduce Hungary to the position of a province of the empire, and to abolish its independent national institutions. However, by the Pragmatic Sanction, which was embodied in three Hungarian laws of 1722–23, the rights of Hungary were again guaranteed. Notwithstanding this guaranty the effort to weaken or destroy Hungarian institutions continued, and under Joseph II separate Hungarian institutions were almost completely ignored. But the popular opposition forced Joseph's successor to pursue a more conciliatory policy, and Hungarian laws passed in 1791 undid Joseph's attempted reforms.

From 1791 to 1848 the development of Hungarian institutions was intermittent, and during much of this time the diet was not summoned, but the liberal movement began to gain ground after 1830, and swept everything before it in the revolutionary movement of 1848; laws were passed and approved by the Emperor providing for a separate responsible ministry and for annual sessions of the diet, and under these laws Hungary assumed the position of an independent state, allied with Austria by a mere personal union (*see*). But when the army began to obtain control of the revolutionary movement in Austria, the Emperor sought an excuse to break with the Hungarian Government, and to withdraw the great concessions made during the critical period of 1848. Kossuth, who had now gained control of Hungarian affairs, was also eager for a rupture; hostilities commenced; Austrian troops were driven from Hungarian territory; and independence of Austria was declared. Russian troops were called to the aid

of Austria, and the Hungarian revolution came to an end in 1849.

For ten years Hungary was governed as a subject province, but after the Austrian defeat in the Italian war of 1859, a change was made. The Diploma of October 20, 1860, provided for a *Reichsrat* in which all parts of the empire should be represented, and seemed also to recognize the rights claimed by Hungary under the laws of 1848. But the Patent of February 26, 1861, reversed this policy, and sought to centralize power in the hands of a legislature at Vienna. Hungary refused to join in such a legislature or to be content with any arrangement which should not give her absolute control over her local affairs. For nearly five years the experiment of a central imperial legislature was tried, but it was seen to be a failure. In 1865 negotiations were entered into upon the basis of Hungary's right to an independent government, and the agreement of 1867 (reached after the Austro-Prussian war) guarantees "the laws, constitution, legal independence, freedom, and territorial integrity of Hungary and its subordinate countries." The Hungarian laws of 1848 again came into full force, and the parliamentary institutions of Hungary were reëstablished upon a firm basis, which has lasted, with modifications, to the present time.

The adoption of the *Ausgleich* in 1867 meant the recognition of Hungary as a coördinate part of the empire, the establishment of the system of dualism. The union established by this agreement is, however, much more than a mere personal union, for there is a joint ministry which handles foreign affairs, military and naval affairs and the finances with respect to these matters; the affairs of Bosnia and Herzegovina also fall under the supervision of this joint ministry. In addition commercial, monetary, railway, and some other matters are managed upon uniform principles, and often by identical laws. The delegations, composed of sixty members from the Austrian *Reichsrat* and of the same number from the Hungarian diet, form a joint legislative body for the two countries, although these delegations are to a very large extent merely committees of the bodies by which they are chosen.

The *Ausgleich* of 1867 comprised not only the laws regulating the permanent political relations between Austria and Hungary, but also laws enacted for a period of ten years, establishing a common customs system for the two countries, and fixing Hungary's share in the expenses of the joint government. These ten-year treaties were enlarged and renewed in 1878 and 1887. Negotiations for their renewal were begun in 1896, but no agreement could be reached and not until 1907 were negotiations finally completed. These laws relate principally to the uniform customs tariff for the two countries and to general trade relations, to the monetary system and a joint bank and to Hungary's quota of expenses of the joint Austro-Hungarian government.

See States, Classification of.

Reference: L. Eisenmann, *Le Compromis Austro-Hongrois de 1867,—Etude sur le dualisme* (1904). W. F. Dodd.

AUSTRIA-HUNGARY, DIPLOMATIC RELATIONS WITH. Commercial intercourse with Austria, insignificant at first, increased after 1815, and in 1829 resulted in a treaty of commerce and navigation. Regular diplomatic relations began with the American appointment of Nathaniel Niles as agent in 1837, and the Austrian appointment of Baron de Mareschal as envoy and minister in 1838. A treaty relating to property and consular jurisdiction was negotiated in 1848, followed by a treaty of extradition in 1856.

Under the stimulus of democratic expansion and manifest destiny (*see*) the United States exhibited deep sympathy for Hungary, in her unsuccessful struggle against Austria and Russia. This induced the American Government to send (1849) an agent, A. Dudley Mann, with a view to recognition of the Hungarian republic; and led Congress in 1849, after Hungary was crushed, to offer asylum to Kossuth and to give him a public reception when he visited Washington. The Mann mission, when it became known, provoked a strong protest from Austria (1852), through Huelsemann (*see*), to whom Webster made a vigorous and spirited reply.

In 1853, new friction arose in the case of Martin Koszta, a Hungarian refugee to America who, having returned to Europe after declaring intention to become an American citizen, was seized in a Turkish port by an Austrian cruiser and forcibly released by Captain Ingraham of an American war vessel. Huelsemann demanded reparation and disavowal which Secretary Marcy refused to give. At the close of a diplomatic warfare, Austria surrendered her claim to jurisdiction over Koszta, who returned to America with the understanding that Austria could proceed against him if he should go back to Turkey.

Apparently friendly to the United States at the opening of the secession struggle, Austria never accorded belligerent rights to the Confederates. After the close of the war, however, (1867) Motley was instructed to warn Austria against sending volunteers to replace French troops in Mexico, and to withdraw from Vienna if departure of troops was permitted.

After the Civil War, questions relating to naturalization and expatriation were the most prominent and most persistent. Although the naturalization convention with Austria-Hungary in 1870 recognized the right of change of citizenship after uninterrupted residence of five years, its interpretation frequently became a subject of diplomatic discussion; persons were arrested who, born in Austria or Hungary, had

emigrated to the United States before the performance of their military service, (often to escape it); and after meeting American requirements for citizenship returned to their native land to reside permanently. The earlier friction thus arising greatly decreased by 1900 as a result of steady progress toward satisfactory settlement through more precise information in each case. Arrests became less frequent. On the representations of the American legation, in worthy cases, the Austrian Government observed treaty provision in most of the arrests of American naturalized citizens for alleged evasion of military service, and considered them released from military obligations.

Among other questions affecting diplomatic relations since 1870, Austrian tariffs and trade restrictions (especially on meats and fruits) stand first. Trade relations were improved by the reciprocity arrangement of 1892, but obstructions to American imports still threatened to provoke retaliatory inspection of Austrian imports into the United States. Among other questions, in 1891, there was considerable correspondence relating to the prevention of emigration of defective, dependent and delinquent classes.

Although Austria sympathized with Spain in the Spanish-American war, her authorities at Trieste gave a friendly reception to Admiral Dewey in 1899. In 1909 Austria-Hungary agreed to an arbitration treaty with the United States.

See Arbitrations, American; Behring Sea Controversy; Expatriation; Fisheries, International; Great Britain, Diplomatic Relations with; Koszta Episode; Russia, Diplomatic Relations with.

References: W. E. Curtis, *U. S. and Foreign Powers* (1892), 227–30; *Foreign Relations, 1861 to 1911*; J. B. Moore, *Digest of Am. Int. Law* (1906), III, 442–45, 408–23, V, 261, 391, 820–54; T. C. Smith, *Parties and Slavery* (1906), 30–32, 76, 78. J. M. Callahan.

AUTOMOBILE REGULATION. The rapid growth of the use of automobiles has brought new legal problems which are sources of active litigation. Legally, automobiles come within preëxisting laws relating to vehicles for passengers or freight; and they come in most cases within the legal definition of a carriage. To this effect are numerous decisions in several states which upon principle seem correct, though Massachusetts courts have held otherwise (Doherty *vs.* Town of Ayer, 197 *Mass.* 241). In questions of highway and right of way, automobiles, though invented later than the time when certain easements were created, come within the usual terms, if not otherwise restricted; grants have been held to include automobiles or any vehicle on wheels "then or thereafter to be used." This has been affirmed in courts in New Jersey, New York, Pennsylvania, Texas and many other states and is followed in the wording of the statutes of the United States.

A sound legislative and judicial tendency has been to enlarge in behalf of motorists, so far as consistent with the safety of the public, the usual rights of vehicles. In many states, by legislative enactment, automobilists are held to personal responsibility for driving safely, instead of limiting their speed to a definite mileage per hour. Motorists are held to a strict compliance with the law of the state in which they travel, together with reasonable caution and care for the safety of others. Thus, nearly all the states have enacted laws to the effect that automobiles shall not be operated on public avenues of travel unless statutory provisions have been followed relative to announcing their coming by bells and other signals and lights; and with due regard to the regular and speed rules of the road, such as keeping on the right, and display of the registered number, moving cautiously at crossings and at reasonable speed in all conditions.

Automobile regulation in the United States was framed originally upon the theory of state control, hence the almost universal requirement of registration by a public authority. Revenue has been exacted from motorists in many states under the licensing power of the government. It is clear, however, that transit from state to state cannot be taxed, since the police powers of the states do not permit of such taxation.

A leading case (Commonwealth *vs.* Boyd, 188 *Mass.* 79) held constitutional a Massachusetts statute requiring registration and fee and the display on the automobile of the registered number. Such authority may be transferred to a municipality or other unit of local government, and this has been done in many states. A license to operate an automobile is merely a privilege and is revocable. In England and in many of the states provision is specifically made for the revoking of such a license.

Precise uniformity in automobile legislation throughout the United States is not practicable; it must differ according to the location of the state and the number of automobiles. Thus automobile fees adequate for one state would not suffice for another.

In case of accidents, the measure of damages follows the usual rule and is given as compensation for injuries sustained, being governed by the actual loss and including everything of which a party has been deprived as a direct and natural consequence of the injury.

See Roads; Streets.

References: T. O. Abbott, *Automobile Law for Motorists* (1909); Z. P. Huddy, *Law of Automobiles* (3d ed., 1912); C. J. Babbitt, *Treatise on Law Relating to Automobiles* (1911). Ralph Woodworth.

B

BACK FROM ELBA. A phrase applied by the newspaper press in 1910 to the return of Theodore Roosevelt (*see*) from Africa, signifying that he would become the rallying point for the Republican forces. O. C. H.

BACK PAY GRAB. See SALARY GRAB.

BACK TAXES. See TAXES, BACK.

BAIL. The word, as a substantive, is sometimes used to denote the process of bailing, sometimes for the persons who become sureties for the appearance of the person bailed. As a process, bail is the delivery or bailment, by the court or magistrate, of a person charged with crime, or arrested on civil process, to his sureties, upon their and his giving, security for his appearance, at a specified time, or upon the order of the court, to answer to the charge. In legal contemplation the person bailed is in the friendly custody of his sureties, instead of being committed to prison. The evidence of the security for the principal's appearance is a bond or recognizance, executed by him and his principals. H. M. B.

BAIL, EXCESSIVE. The provision in the Constitution of the United States (Amendment VIII) that "excessive bail shall not be required," found also in practically all the state constitutions, relates to the custody of one charged with crime from the time of his arrest until there is a final judgment of conviction or acquittal. Such a provision, in the very language of the English Bill of Rights, evidently assumes that the accused is entitled by law to bail in proper cases, and the possible abuse to which it is directed is that of complying with the law in its letter by allowing bail but violating its spirit by making the amount so excessive that it cannot be furnished. As the tendency of legislation has been uniformly towards extending rather than restricting the right to furnish bail, no occasion has arisen for declaring legislation to be unconstitutional under the guarantee. With reference to the action of a court, judge, or magistrate in fixing the amount of bail, the only question which can arise involving the guarantee is whether such action is within the reasonable limits of judicial discretion or is arbitrary or oppressive, and it is doubtful whether the guarantee is of any value in such cases. See BILLS OF RIGHTS; LAWS, CRIMINAL. **References:** T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898) 318; U. S. *vs.* Hamilton, 3 *Dallas*, 17; E. McClain, *Constitutional Law* (1905), 327–328. E. McC.

BAKER'S ISLAND. Baker's Island, southwest of Hawaii and almost on the equator, was discovered by Michael Baker in 1832 and taken possession of by the United States in 1857. It is uninhabited, is less than a square mile in area, has no safe anchorage and no drinking water, but has had large deposits of guano. **Reference:** J. B. Moore, *Digest of Int. Law* I (1906), 572. G. H. B.

BALANCE OF POWER. The idea of the maintenance of balance of power existed even among the states of early Greece. The Italian states learned to maintain the political equilibrium by alliances. The alliances following shortly after the Treaty of Westphalia of 1648 were often made for the purpose of maintaining the balance of power, but the eighteenth century in Europe was a period particularly influenced by the idea that the relations among states should be such that the well-being of states then in existence should not be endangered by the acquisition of too great power by any one state or by a group of states. The Treaty of Utrecht of 1713 contains a provision, giving as one of its objects "the confirming and establishing of the peace and tranquility of the Christian world through a just equilibrium of power." That acts were undertaken for the preservation of the balance of power was one of the claims frequently put forward to justify aggression and intervention. The doctrine that the *status quo* of 1713 was the right and proper division of political power was frequently affirmed. Later there was an attempt to maintain the status of 1815 as being a permanent and correct basis for international relations. Napoleon III advanced as a corollary of this doctrine the idea that whenever the power of one European state was enhanced through union of two or more states or otherwise, France should receive territory sufficient to maintain the relative power. He demanded the cession of Savoy and Nice in 1860 to balance the union of central Italy and Piedmont. Great Britain and France determined to aid the Sultan against Russia in 1854 "being fully persuaded that the existence of the Ottoman Empire in its present Limits is essential to the maintenance of the Balance of Power among the States of Europe." This mainten-

ance of the balance of power in south-eastern Europe has been the ostensible reason for much of the European policy in regard to that region. International conferences and congresses have named as their reason for being the desire to maintain this so-called balance of power. These gatherings have settled boundaries and political relations, set up and removed rulers, passed upon questions of international justice, often without inviting the attendance of those most affected by their action. See ARMED NEUTRALITY; CONGRESSES AND CONFERENCES; CONQUEST, RIGHT OF; DEPENDENT STATES; DISARMAMENT; MONROE DOCTRINE; PROTECTORATES, INTERNATIONAL; STATES, EQUALITY OF. **References:** T. J. Lawrence, *Int. Law* (1910), 130; R. Phillimore, *Int. Law* (1879–1888), §§ 390 *et seq.;* J. Westlake, *Int. Law* (1908), Pt. I, 304.

GEORGE G. WILSON.

BALANCE OF TRADE. Originally, the term "balance of trade" referred to the excess in value of a country's exports of merchandise over its imports of merchandise, or *vice versa.* It rested on the twofold idea, fundamental to the mercantile system, that a nation's power and prosperity depended mainly on possessing a large stock of precious metals, and that the regulation of its foreign trade was necessary for a nation to accumulate its supply of them. If the total value of exports exceeded the aggregate value of imports, the nation would receive precious metals to defray the balance, which was therefore called "favorable." In the contrary case of an excess on the side of imports, an "unfavorable" balance carried specie from the country.

Later, economists showed that international trade is ultimately a barter of goods for goods, in which the balance cannot remain permanently on the same side of any nation's account; and that the movement of specie between countries is governed by the balance of payments, which includes, besides value of merchandise, a long list of "invisible" imports and exports; such as shipping costs, investments by foreigners with interest and reimbursements, expenses of travel and residence abroad. Hence a nation having large foreign investments may have a permanent excess of merchandise imports, while actually increasing its investments abroad. In monetary circles, the term balance of trade is applied to this balance of payment, and denotes the right of a country to import specie. It has special significance in connection with a foresighted regulation of exchange and discount rates with a view to the timely curbing of tendencies which might otherwise pass through a monetary crisis to self-correction. See ECONOMIC THEORY, HISTORY OF; FREE TRADE AND PROTECTION. **References:** George Paish, *Trade Balance of the United States* in National Monetary Commission, "Reports" in *Sen. Doc.*, No. 579 (1910); C. F. Bastable, *Theory of International Trade* (4th ed., 1903), chs. iv., v.; G. J. Goschen, *Theory of the Foreign Exchanges,* (3d ed., 1896); J. Hucke, *Die Handelsbilanz,* (1901).

E. H. VICKERS.

BALLINGER, RICHARD ACHILLES. Richard A. Ballinger (1858–) was born at Boonsboro, Ia., July 9, 1858. In 1886 he was admitted to the bar, practicing in Illinois and Alabama until 1897, and after that date at Seattle, Wash. From 1890 to 1892 he was United States commissioner at Port Townsend, Wash. From 1894 to 1898 he was judge of the state superior court. From 1904 to 1906 he was mayor of Seattle. From March, 1907, to March, 1909, he was commissioner of the general land office. In 1908 he was a member of the Republican national convention at Chicago; and in 1909 was made Secretary of the Interior. His official course in the administration of the public lands was severely criticized, but a congressional investigation exonerated him from charges of official misconduct. He resigned his office March 7, 1911. He is the author of a *Treatise on the Property Rights of Husband and Wife* (1895), and *Annotated Codes and Statutes of Washington* (1897). See CONSERVATION. **Reference:** Joint Committee to Investigate the Interior Department and Forestry Service, "Report" in *Senate Docs.*, 61 Cong., 3 Sess., No. 719 (1911).

W. MACD.

BALLOT. Definition.—Etymologically, ballot signifies a little ball such as the ancients used in voting. It has come to mean the piece of paper, bearing the printed or written names of candidates, which the voter deposits in the receptacle prescribed by law; often, also, ballot is used in the sense of "a secret vote."

Secret Ballot.—Primitive elections are usually by some overt act—by *ayes and noes,* or by show of hands. The first record of secret voting in the English colonies was at the general court in Boston, 1634, when Dudley, "chosen by papers," defeated Winthrop for governor. There is some evidence that the use of the written ballot may have been introduced from Holland, by way of Plymouth. Secret voting grew in favor, though in some later colonial elections various colored beans and Indian corn were used in place of slips of paper. Nine of the constitutions of the period 1776 to 1780 required that the election of certain officers be by ballot. *Viva voce* voting continued, however, in Kentucky state elections until 1891, in spite of the fact that federal law required the use of the ballot in electing Kentucky's Representatives in Congress.

About the middle of the nineteenth century, it began to be evident that the ballot's form and use must be regulated by law. Serious abuses had arisen. Bribery and corruption

were rife. Various fraudulent devices were used either to stuff the ballot-box or to impair the secrecy of the vote. Yet a genuine secrecy of the ballot was all the while becoming more essential in order to protect the political independence of masses of voters who were employees of great masters of industry, eager for legislative favors. An early step to secure secrecy was taken by the Massachusetts law of 1851, which required the secretary of the commonwealth to prepare and distribute to the clerks of all the cities and towns uniform envelopes, bearing the seal of the commonwealth, in which the voter was to seal up his ballot before placing it in the box.

Australian Ballot.—The first "Australian Ballot" (*see*) law in the United States was enacted by Kentucky in 1888 and applied only to the election of certain offices in Louisville. In the same year, Massachusetts enacted a law, which went into effect in 1889, and provided for the use of the Australian ballot in state elections. So rapid has been the spread of the new device that in 1913, out of the 48 states in the United States only two (Georgia and Louisiana) remain, which have not adopted some form of the Australian ballot.

Nine out of ten of the states have provided for an official "blanket ballot"—one on which, by one arrangement or another, there are grouped the names of all candidates who have been duly placed in nomination by the several parties or organizations of voters for the offices which are to be filled at the pending election. The exceptions are: (1) Missouri and New Mexico, which provide that all ballots shall be official and printed at public expense, but that a separate ballot shall be furnished for each party; and (2) Georgia and South Carolina which leave to the voters the entire preparation and distribution of the ballots; Georgia does not even prescribe that the ballots shall be uniform in size, shape or color.

Forms.—The laws of the forty and more states which have adopted the official "blanket" ballot may be divided into two groups, according to their method of arranging the candidates' names upon the ballot. (1) Thirty-one states have the "party-column" form of ballot, on which the candidates of each party are arranged in a vertical column, headed by the name and—in all but twelve—also by the emblem of the party. In all but two of these states (Iowa and Montana) provision is made whereby the voter can easily vote a "straight" party ticket—usually by marking a single cross in a square or circle under the party name or emblem at the head of the column. (2) Fourteen states have the "office-group" or "Massachusetts" form of ballot, on which the several candidates for each office are grouped together, their names usually being arranged alphabetically, and each accompanied by the name of the party nominating him. It is the obvious intent and effect of adoption of this form of ballot to make the voter stop and think in the act of voting. Nevertheless, three states which have this form (Colorado, Nebraska, and Pennsylvania) have provided special devices which make it especially easy to vote a straight party ticket, thus abandoning the distinctive advantage of the Massachusetts form of ballot.

In states having the Massachusetts form of ballot, the provision that the name of no candidate for single office shall appear more than once upon the ballot works no hardship; but this limitation is found in 14 states having the "party-column ballot," and here its effect is to discourage fusion in nominations. In 1908, in vetoing a New York bill which contained this provision, Governor Hughes characterized it as "wholly indefensible," and declared that the remedy for the candidate's name appearing in several columns was to change the form of the ballot and abolish the party column.

Dangers and Problems.—The introduction of the Australian ballot could not have become practically universal throughout the United States in less than twenty-five years, had not the politicians seen in the reform an opportunity which made it well worth capturing for their own uses. It has indisputably lessened open intimidation and coercion, and has made the polls more orderly; but there have been attendant evils, which enforce the truth that good government depends more upon the intelligence and character of the voter than upon electoral devices. Increasing complexity of ballot legislation produces more pit-falls for the unwary, and more opportunities which may be taken advantage of by the party in power. The "party-column" ballot is particularly congenial to the politician. With its party emblem, it makes the minimum exaction upon the voter's thought and effort. Moreover, the Australian ballot confers a legal sanction upon party organization, and under some state systems places great power in the hands of party officers in determining who shall be accorded party recognition as candidates or voters. The requisite number of petitioners, or of votes cast by a certain group at the preceding election, is often fixed so high as to exclude from a place on the ballot groups which have as yet made few converts, but which have in them the promise of effective leadership. The fact is, that most of the newer voting devices make scratching the ballot an act which may seriously menace its validity, and put heavy discouragements upon independent voting.

In recent years the ballot often reaches portentous proportions. The one used in the municipal election in New York City, November 2, 1909, was 46 inches long and 15 wide; it contained one blank column, in which the voter might write the names of men for whom he wished to vote, and 18 columns headed by party emblems, although 13 of them were labeled "Independent Nominations." Several columns contained a full list of 21 candidates;

INSTRUCTIONS TO VOTERS:

To vote a straight Ticket, Stamp a cross (X) within the circle under the party heading.

To vote a split Ticket, that is, for candidates of different parties, stamp a cross (X) in the voting circle at the head of your party ticket and a cross (X) after each candidate not on your party ticket for whom you desire to vote, or stamp a cross (X) for each individual candidate for whom you desire to vote, and DO NOT STAMP your party voting circle.

Where two or more candidates for the same office are to be elected and you desire to vote for candidates for that office who are on your party ticket, and also for candidates for that office who are not on such ticket, stamp a cross (X) after the names of all the candidates for that office for whom you desire to vote, whether they be on your party ticket or not.

Where a party has made no nomination for an office, the space for that office in the party column is omitted on this ballot.

If a party ticket does not contain the names of candidates for all offices for which the voter may vote, he may, if he votes the straight ticket of such party, vote for candidates for such offices so omitted by stamping a cross (X) in the voting square opposite the names of the candidates for such offices on any other ticket, or by writing the names, if they are not printed upon the ballot, in the blank column under the title of the office. To vote for a person not on the ballot, write the name of such person under the title of the office, in the blank column, and do not stamp a cross (X) after the name written in the blank column.

ALL MARKS EXCEPT THE CROSS (X) ARE FORBIDDEN. ALL DISTINGUISHING MARKS OR ERASURES ARE FORBIDDEN AND MAKE THE BALLOT VOID. If you WRONGLY STAMP, TEAR, or DEFACE THIS BALLOT, return it to the Inspector of Election and obtain another.

REPUBLICAN TICKET

To vote a straight ticket stamp a cross (X) within this circle.

- For Governor, HIRAM W. JOHNSON.
- For Lieutenant Governor, ALBERT J. WALLACE.
- For Associate Justice of the Supreme Court, (Vote for Two) HENRY A. MELVIN.
- For Associate Justice of the Supreme Court, (Vote for Two) M. C. SLOSS.
- For Secretary of State, FRANK C. JORDAN.
- For Controller, A. B. NYE.
- For Treasurer, W. R. WILLIAMS.
- For Attorney General, U. S. WEBB.
- For Surveyor General, WILLIAM STEPHEN KINGSBURY.
- For Clerk of the Supreme Court, B. GRANT TAYLOR.
- For Superintendent of Public Instruction, EDWARD HYATT.
- For Superintendent of State Printing, WILLIAM W. SHANNON.
- For Associate Justice of the District Court of Appeal, Second Appellate District, VICTOR E. SHAW.
- For Representative to the Congress of the United States from the Seventh District, WILLIAM D. STEPHENS.
- For Member of State Board of Equalization, Fourth District, JEFF McELVAINE.
- For Railroad Commissioner, Third District, JOHN M. ESHLEMAN.
- For Judge of the Superior Court, (Full Term) (Vote for Three) GAVIN W. CRAIG.
- For Judge of the Superior Court, (Full Term) (Vote for Three) FRANK G. FINLAYSON.
- For Judge of the Superior Court, (Full Term) (Vote for Three) JOHN PERRY WOOD.
- For Member of the Assembly, Seventy-third Assembly District, HENRY H. LYON.
- For Supervisor, Third Supervisorial District, SIDNEY A. BUTLER.

DEMOCRATIC TICKET

To vote a straight ticket stamp a cross (X) within this circle.

- For Governor, THEODORE A. BELL.
- For Lieutenant Governor, TIMOTHY SPELLACY.
- For Associate Justice of the Supreme Court, (Vote for Two) BENJAMIN P. BLEDSOE.
- For Associate Justice of the Supreme Court, (Vote for Two) WILLIAM P. LAWLOR.
- For Secretary of State, SIMEON S. BAYLEY.
- For Controller, A. B. NYE.
- For Treasurer, TUPPER S. MALONE.
- For Attorney General, J. E. PEMBERTON.
- For Surveyor General, E. W. NOLAN.
- For Clerk of the Supreme Court, HIRAM A. BLANCHARD.
- For Superintendent of Public Instruction, THOMAS H. KIRK.
- For Superintendent of State Printing, D. W. RAVENSCROFT.
- For Associate Justice of the District Court of Appeal, Second Appellate District, MINOR MOORE.
- For Representative to the Congress of the United States from the Seventh District, LORIN A. HANDLEY.
- For Member of State Board of Equalization, Fourth District, JAMES H. BOYD.
- For Railroad Commissioner, Third District, W. C. WALL.
- For Judge of the Superior Court, (Full Term) (Vote for Three) STEPHEN G. LONG.
- For Judge of the Superior Court, (Full Term) (Vote for Three) CYRUS F. McNUTT.
- For Judge of the Superior Court, (Full Term) (Vote for Three) ALBERT LEE STEPHENS.
- For Member of the Assembly, Seventy-third Assembly District, EDWIN C. MAYNAM.
- For Supervisor, Third Supervisorial District, J. L. MANSFIELD.

INDEPENDENCE LEAGUE TICKET

To vote a straight ticket stamp a cross (X) within this circle.

- For Representative to the Congress of the United States from the Seventh District, WILLIAM D. STEPHENS.
- For Judge of the Superior Court, (Full Term) (Vote for Three) W. R. HERVEY.
- For County Clerk, C. G. KEYES.
- For Auditor, H. N. DOW.
- For Tax Collector, W. O. WELCH.
- For County Superintendent of Schools, MARK KEPPEL.
- For Justice of the Peace of Los Angeles City, (Vote for Four) P. S. FORBES.
- For Constable of Los Angeles Township, (Vote for Four) C. C. RICE.

SOCIALIST TICKET

To vote a straight ticket stamp a cross (X) within this circle.

- For Governor, J. STITT WILSON.
- For Lieutenant Governor, FRED C. WHEELER.
- For Associate Justice of the Supreme Court, (Vote for Two) CLARENCE MEILY.
- For Associate Justice of the Supreme Court, (Vote for Two) F. B. MERIAM.
- For Secretary of State, EDW. A. CANTRELL.
- For Controller, W. S. DEEDS.
- For Treasurer, A. E. BRIGGS.
- For Attorney General, HENRY L. FORD.
- For Surveyor General, R. GILHOUSEN.
- For Clerk of the Supreme Court, M. E. SHORE.
- For Superintendent of Public Instruction, AGNES H. DOWNING.
- For Superintendent of State Printing, FRANCIS M. ELLIOTT.
- For Associate Justice of the District Court of Appeal, Second Appellate District, GUSTAVE PETZER.
- For Representative to the Congress of the United States from the Seventh District, T. W. WILLIAMS.
- For Member of State Board of Equalization, Fourth District, J. J. HICKS.
- For Railroad Commissioner, Third District, E. W. EVANS.
- For Judge of the Superior Court, (Full Term) (Vote for Three) GEO. W. DOWNING.
- For Judge of the Superior Court, (Full Term) (Vote for Three) E. W. TUTTLE.
- For Judge of the Superior Court, (Full Term) (Vote for Three) CLARENCE MEILY.
- For Member of the Assembly, Seventy-third Assembly District, A. F. LINDWALL.
- For Supervisor, Third Supervisorial District, J. C. GOMBER.

PROHIBITION TICKET

To vote a straight ticket stamp a cross (X) within this circle.

- For Governor, SIMEON PEASE MEADS.
- For Lieutenant Governor, M. W. ATWOOD.
- For Associate Justice of the Supreme Court, (Vote for Two) JAMES H. BLANCHARD.
- For Associate Justice of the Supreme Court, (Vote for Two) M. C. SLOSS.
- For Secretary of State, LUCIUS C. DALE.
- For Controller, C. V. STURDEVANT.
- For Treasurer, W. P. FASSETT.
- For Attorney General, WALLACE M. PENCE.
- For Surveyor General, HARRY V. WHEELER.
- For Clerk of the Supreme Court, FREDERICK HEAD.
- For Superintendent of Public Instruction, PERRY O. COLE.
- For Superintendent of State Printing, CLARENCE J. KINNE.
- For Representative to the Congress of the United States from the Seventh District, CHAS. V. LA FONTAINE.
- For Member of State Board of Equalization, Fourth District, A. K. NASH.
- For Railroad Commissioner, Third District, JOHN WHITSON.
- For Judge of the Superior Court, (Full Term) (Vote for Three) GAVIN W. CRAIG.
- For Judge of the Superior Court, (Full Term) (Vote for Three) F. G. FINLAYSON.
- For Judge of the Superior Court, (Full Term) (Vote for Three) JOHN P. WOOD.
- For Supervisor, Third Supervisorial District, SIDNEY A. BUTLER.
- For Sheriff, J. H. DE LA MONTE.
- For District Attorney, FRANK S. HUTTON.

INDEPENDENT NOMINATIONS

- For Associate Justice of the District Court of Appeal, Second Appellate District (Unexpired Term) NATHANIEL P. CONREY
- For Associate Justice of the District Court of Appeal, Second Appellate District (Unexpired Term) WILLIAM P. JAMES
- For Judge of the Superior Court, (Unexpired Term) PAUL J. McCORMICK
- For Judge of the Superior Court, (Unexpired Term) DANA R. WELLER

GOOD GOVERNMENT ORGANIZATION TICKET

To vote a straight ticket stamp a cross (X) within this circle.

- For Judge of the Superior Court, (Full Term) (Vote for Three) FRANK G. FINLAYSON
- For Judge of the Superior Court, (Full Term) (Vote for Three) ALBERT LEE STEPHENS
- For Judge of the Superior Court, (Full Term) (Vote for Three) JOHN PERRY WOOD
- For Judge of the Superior Court, (Unexpired Term) LEWIS R. WORKS
- For Tax Collector, WALTER J. DESMOND
- For District Attorney, THOMAS LEE WOOLWINE
- For Coroner, A. C. PRATT
- For Justice of the Peace of Los Angeles Township, (Vote for Four) FRANK S. FORBES
- For Justice of the Peace of Los Angeles Township, (Vote for Four) LUCIUS P. GREEN
- For Justice of the Peace of Los Angeles Township, (Vote for Four) SIDNEY REEVE
- For Justice of the Peace of Los Angeles Township, (Vote for Four) WILLIAM YOUNG
- For Justice of the Peace of Los Angeles City, (Vote for Four) JOSEPH W. CHAMBERS
- For Justice of the Peace of Los Angeles City, (Vote for Four) WILLIAM FREDERICKSOH

BLANK COLUMN

THE ELECTOR MAY WRITE IN THE COLUMN BELOW, UNDER THE TITLE OF THE OFFICE, THE NAME OF ANY PERSON WHOSE NAME IS NOT PRINTED UPON THE BALLOT, FOR WHOM HE DESIRES TO VOTE. DO NOT USE A VOTING STAMP (X) OR MAKE ANY CROSS (X) IN THIS COLUMN.

- For Governor,
- For Lieutenant Governor,
- For Associate Justice of the Supreme Court, (Vote for Two)
- For Associate Justice of the Supreme Court, (Vote for Two)
- For Secretary of State,
- For Controller,
- For Treasurer,
- For Attorney General,
- For Surveyor General,
- For Clerk of the Supreme Court,
- For Superintendent of Public Instruction,
- For Superintendent of State Printing,
- For Associate Justice of the District Court of Appeal, Second Appellate District,
- For Representative to the Congress of the United States from the Seventh District,
- For Member State Board of Equalization, Fourth District,
- For Railroad Commissioner, Third District,
- For Judge of the Superior Court, (Full Term) (Vote for Three)
- For Judge of the Superior Court, (Full Term) (Vote for Three)
- For Judge of the Superior Court, (Full Term) (Vote for Three)
- For Judge of the Superior Court, (Unexpired Term)
- For Member of the Assembly, Seventy-third Assembly District,

CONSTITUTIONAL AMENDMENTS AND PROPOSITIONS

Proposition	Vote
Senate Constitutional Amendment No. 1—Providing for the separation of State and local taxation, and providing for the taxation of public service and other corporations for the benefit of the State.	Yes
	No
Senate Constitutional Amendment No. 11—Providing that a mortgage, deed of trust, contract, or other obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such debt, shall be exempt from taxation.	Yes
	No
Senate Constitutional Amendment No. 36—Relating to Judges of the Superior Court.	Yes
	No
Senate Constitutional Amendment No. 38—Relating to the formation of new counties, and altering the boundary lines of existing counties.	Yes
	No
Senate Constitutional Amendment No. 44—Providing for the classification by the legislature of cities and towns by population for the purpose of regulating the business of banking.	Yes
	No
Senate Constitutional Amendment No. 52—Relating to how money may be appropriated and drawn from the State treasury, and providing for the raising of $5,000,000 to be used in establishing, maintaining, and supporting in the City and County of San Francisco the Panama Pacific International Exposition.	Yes
	No
Assembly Constitutional Amendment No. 14—Relating to the right of the people to fish.	Yes
	No
Assembly Constitutional Amendment No. 33—Authorizing the City and County of San Francisco to amend its charter in aid of Panama Pacific International Exposition.	Yes
	No
"For the San Francisco Harbor Improvement Act of 1909." "This Act provides for the improvement of San Francisco Harbor and for the payment of all costs thereof out of San Francisco Harbor Improvement Fund."	
"Against the San Francisco Harbor Improvement Act of 1909." "This Act provides for the improvement of San Francisco Harbor and for the payment of all costs thereof out of San Francisco Harbor Improvement Fund."	
"For the State Highway Act"	

For Sheriff, W. A. HAMMEL.
For District Attorney, JOHN D. FREDERICKS.
For County Clerk, HARRY J. LELANDE.
For Auditor, WALTER A. LEWIS.
For Treasurer, JOHN N. HUNT.
For Assessor, ED W. HOPKINS.
For Tax Collector, W. O. WELCH.
For Recorder, CHARLES L. LOGAN.
For Public Administrator, FRANK BRYSON.
For County Superintendent of Schools, MARK KEPPEL.
For Coroner, CALVIN HARTWELL.
For Surveyor, I. B. NOBLE.
For Justice of the Peace of Los Angeles Township, (Vote for Four) FRANK S. FORBES.
For Justice of the Peace of Los Angeles Township, (Vote for Four) SIDNEY N. REEVE.
For Justice of the Peace of Los Angeles Township, (Vote for Four) J. W. SUMMERFIELD.
For Justice of the Peace of Los Angeles Township, (Vote for Four) WM. YOUNG.
For Justice of the Peace of Los Angeles City, (Vote for Four) JOSEPH F. CHAMBERS.
For Justice of the Peace of Los Angeles City, (Vote for Four) WM. FREDERICKSON.
For Justice of the Peace of Los Angeles City, (Vote for Four) H. H. ROSE.
For Justice of the Peace of Los Angeles City, (Vote for Four) WARREN L. WILLIAMS.
For Constable of Los Angeles Township, (Vote for Four) HENRY C. HAYES.
For Constable of Los Angeles Township, (Vote for Four) GEORGE W. LYONS.
For Constable of Los Angeles Township, (Vote for Four) CHARLES R. THOMAS.
For Constable of Los Angeles Township, (Vote for Four) ROGER A. WOODBURY.

For Sheriff, WILLIAM T. HARRIS.
For District Attorney, THOMAS LEE WOOLWINE.
For County Clerk, LLOYD W. McATEE.
For Auditor, FRED L. DWYER.
For Treasurer, C. W. JUDY.
For Assessor, WILLIAM H. TRUITT.
For Tax Collector, WALTER J. DRSMOND.
For Recorder, THOS. SHELLEY SUTTON.
For Public Administrator, W. L. MOORE.
For County Superintendent of Schools, MARK KEPPEL.
For Coroner, A. C. PRATT.
For Surveyor, FELIX VIOLE.
For Justice of the Peace of Los Angeles Township, (Vote for Four) LUCIUS F. GREEN.
For Justice of the Peace of Los Angeles Township, (Vote for Four) J. R. HOLLEY.
For Justice of the Peace of Los Angeles Township, (Vote for Four) JOHN W. HUNTSBERGER.
For Justice of the Peace of Los Angeles Township, (Vote for Four) ROBERT G. LOUCKS.
For Justice of the Peace of Los Angeles City, (Vote for Four) JOSEPH F. CHAMBERS.
For Justice of the Peace of Los Angeles City, (Vote for Four) STEPHEN MONTELEONE.
For Justice of the Peace of Los Angeles City, (Vote for Four) WILLIAM I. TRAEGER.
For Justice of the Peace of Los Angeles City, (Vote for Four) CHARLES S. WILSON.
For Constable of Los Angeles Township, (Vote for Four) GEORGE R. BLAKE.
For Constable of Los Angeles Township, (Vote for Four) WILLIAM A. BUTTERFIELD.
For Constable of Los Angeles Township, (Vote for Four) JOHN I. MOSS.
For Constable of Los Angeles Township, (Vote for Four) WILLIAM A. POFF.

For Sheriff, F. H. GILL.
For District Attorney, J. B. RYCKMAN.
For County Clerk, G. P. BARTELL.
For Auditor, A. F. SNELL.
For Treasurer, F. H. QUINN.
For Assessor, L. A. HEISLER.
For Tax Collector, O. C. ZAHN.
For Recorder, C. W. COFFIN.
For Public Administrator, CARL F. RAAB.
For County Superintendent of Schools, MARY E. GARBUTT.
For Coroner, DR. L. PAUL ZAHN.
For Surveyor, J. C. EBERT.
For Justice of the Peace of Los Angeles Township, (Vote for Four) L. M. HARRISON.
For Justice of the Peace of Los Angeles Township, (Vote for Four) F. D. JOHNSON.
For Justice of the Peace of Los Angeles Township, (Vote for Four) J. J. LORENZEN.
For Justice of the Peace of Los Angeles Township, (Vote for Four) E. L. OSGOOD.
For Justice of the Peace of Los Angeles City, (Vote for Four) G. REVEAL.
For Justice of the Peace of Los Angeles City, (Vote for Four) HARRY ROEDER.
For Justice of the Peace of Los Angeles City, (Vote for Four) J. D. STEELE.
For Justice of the Peace of Los Angeles City, (Vote for Four) E. C. THOMPSON.
For Constable of Los Angeles Township, (Vote for Four) GEORGE E. BEVAN.
For Constable of Los Angeles Township, (Vote for Four) A. T. BRADSHAW.
For Constable of Los Angeles Township, (Vote for Four) H. L. FRANKLIN.
For Constable of Los Angeles Township, (Vote for Four) E. A. MUSSEN.

For County Clerk, HARRY J. LELANDE.
For Auditor, WALTER A. LEWIS.
For Treasurer, JOHN N. HUNT.
For Assessor, E. W. HOPKINS.
For Tax Collector, L. D. SWARTWOUT.
For Recorder, CHAS. L. LOGAN.
For Public Administrator, E. E. NORTON.
For County Superintendent of Schools, MARK KEPPEL.
For Coroner, SHERWIN GIBBONS.
For Surveyor, I. B. NOBLE.
For Justice of the Peace of Los Angeles Township, (Vote for Four) FRANK S. FORBES.
For Justice of the Peace of Los Angeles Township, (Vote for Four) GEORGE W. McDILL.
For Justice of the Peace of Los Angeles Township, (Vote for Four) SIDNEY N. REEVE.
For Justice of the Peace of Los Angeles Township, (Vote for Four) WILLIAM YOUNG.
For Justice of the Peace of Los Angeles City, (Vote for Four) JOSEPH CHAMBERS.
For Justice of the Peace of Los Angeles City, (Vote for Four) W. FREDERICKSON.
For Justice of the Peace of Los Angeles City, (Vote for Four) WM. TRAEGER.
For Justice of the Peace of Los Angeles City, (Vote for Four) WARREN L. WILLIAMS.
For Constable of Los Angeles Township, (Vote for Four) HENRY C. HAYES.
For Constable of Los Angeles Township, (Vote for Four) GEORGE W. LYONS.
For Constable of Los Angeles Township, (Vote for Four) C. R. THOMAS.
For Constable of Los Angeles Township, (Vote for Four) R. A. WOODBURY.

For Justice of the Peace of Los Angeles City, (Vote for Four) STEPHEN MONTELEONE.
For Justice of the Peace of Los Angeles City, (Vote for Four) WARREN WILLIAMS.

For Supervisor, Third Supervisorial District,
For Sheriff,
For District Attorney,
For County Clerk,
For Auditor,
For Treasurer,
For Assessor,
For Tax Collector,
For Recorder,
For Public Administrator,
For County Superintendent of Schools,
For Coroner,
For Surveyor,
For Justice of the Peace of Los Angeles Township, (Vote for Four)
For Justice of the Peace of Los Angeles Township, (Vote for Four)
For Justice of the Peace of Los Angeles Township, (Vote for Four)
For Justice of the Peace of Los Angeles Township, (Vote for Four)
For Justice of the Peace of Los Angeles City, (Vote for Four)
For Justice of the Peace of Los Angeles City, (Vote for Four)
For Justice of the Peace of Los Angeles City, (Vote for Four)
For Justice of the Peace of Los Angeles City, (Vote for Four)
For Constable of Los Angeles Township. (Vote for Four)
For Constable of Los Angeles Township. (Vote for Four)
For Constable of Los Angeles Township. (Vote for Four)
For Constable of Los Angeles Township. (Vote for Four)

"Against the State Highway Act."

"For the Indian Basin Act."
"This Act provides for the acquisition of a tidal basin in the Bay of San Francisco for harbor purposes, and for the payment of all costs thereof out of the San Francisco Harbor Improvement Fund."

"Against the Indian Basin Act."
"This Act provides for the acquisition of a tidal basin in the Bay of San Francisco for harbor purposes, and for the payment of all costs thereof out of the San Francisco Harbor Improvement Fund."

"For the San Diego Seawall Act."

"Against the San Diego Seawall Act."

LONG BALLOT USED IN LOS ANGELES, CAL., IN THE ELECTION OF NOVEMBER, 1910

some contained only a nominee for mayor; one party's column contained not a single candidate's name, yet held its place upon the ballot because of the vote it had polled at the preceding election.

Experiments.—States are making fruitful experiments with all sorts of ballots. Wisconsin has authorized the use of a coupon ballot. In some local elections, Grand Junction, Col., and Cambridge, Mass. a preferential ballot (*see* VOTE, PREFERENTIAL) makes it possible to vote for one's "first choice," "second choice" and "other choices," thus assuring, it is claimed, an election acceptable to a larger number than is secured by the ordinary plurality election. In Oregon, upon the ballot used in primary elections, at the candidate's option there may be placed after his name a concise statement of what he stands for. Nor are modern ballots mere lists of names. In an increasing number of states, measures of all grades of complexity and importance are placed upon the ballot by the initiative and referendum. The Oregon ballot of November 5, 1912, contained the names of 177 candidates for 44 federal, state and local offices, and 37 distinct projects of direct legislation, 14 of which involved amendment of the state constitution.

Experience is daily making it clearer that the ballot must be made short and simple, and that the processes which determine its content and arrangement must be kept in the control of the voters and not of irresponsible party managers, else it will yield only the husk and not the kernel of governmental reform.

See BALLOT, SHORT; ELECTIVE SYSTEM; PARTY CIRCLE; POLLS; REGISTRATION; SUFFRAGE.

References: G. W. McCrary, *Am. Law of Elections,* (4th ed., 1897), 387–406, 499–528; F. R. Mechem, *Law of Public Offices and Officers* (1890), 186–198; M. H. Throop, *Law Relating to Public Officers* (1892), 139–145; J. Bryce, *Am. Commonwealth,* (4th ed., 1910), II, 146–155; R. S. Childs, A. C. Ludington, C. A. Beard, in Am. Pol. Sci Assoc. *Proceedings* VI., (1909), 65–99; A. C. Ludington in *Am. Pol. Sci. Review,* III (1909), 152–162, IV (1910), 62–68, 207–212; M. Ostrogorski, *Democracy and the Organization of Political Parties* (1902), II, 500–509; P. S. Reinsch, *Readings on Am. State Gov.* (1911), 364–382; C. L. Jones, *Readings on Party and Elections* (1912), 212–231; P. L. Allen "Ballot Laws" in *Pol. Sci. Quart.,* XXI (1906), 38–58; A. C. Ludington, "Am. Ballot Laws, 1888–1910," in N. Y. State Library *Bulletin,* 1911.

GEORGE H. HAYNES.

BALLOT, AUSTRALIAN. A voting device, developed in South Australia, which began to be introduced into the United States in 1888. The term usually indicates an official ballot, prepared, printed and distributed to the several polling places before an election under the direction of public officials and at public expense. Most states use the "blanket" ballot, which contains the names of all persons duly nominated by the several political organizations. To indicate his choice, the voter, in the privacy of a voting-booth, marks a cross (X) either in the circle under the party name, or against the name of each candidate for whom he wishes to vote. He then folds the ballot so as to conceal all these markings, and delivers it to the election officers, who in his presence deposit it in the ballot-box. See BALLOT; BALLOT, SHORT; ELECTION SYSTEM; SUFFRAGE. **References:** A. C. Ludington, "Ballot Laws" in *Am. Pol. Sci. Review,* III (1909), 252–261, IV (1910), 63–68; C. L. Jones, *Readings on Parties and Elections* (1912), 212–225; P. S. Reinsch, *Readings in Am. State Gov.* (1911), 364; P. L. (1906), 38–58.

G. H. H.

BALLOT BOX STUFFING. Fraudulent voting by means of a ballot paper folded so as to contain two or more ballots, while appearing to be only one. Perhaps first used in the early history of New York.

O. C. H.

BALLOT, SHORT. A short ballot is any voting paper which requires the selection of only a few important candidates. Its benefits appear in our national elections where the voter elects not more than four, usually three, candidates whom he holds accountable for the government. The Short Ballot Organization urges the application of the same principle to state and city elections. Blind voting for all but a few important and well advertised candidates is inevitable when the ballot contains, as in some instances, five hundred names. Since the average citizen could not if he would learn about so many men, he leaves the balance of his ballot blank—refusing to exercise the franchise where it becomes meaningless—or he registers the vote of the politicians who made the party "slate." This apparent indifference results from an over demand for popular attention. Why should every voter in the city pause to consider the relative merits of the candidates for the office of county surveyor? Why should the whole state elect its recorders and clerks? The cry of the reformer is: Make the ballot so short and so important that the average citizen must know whom he elects and then hold those chosen responsible by good appointments to fill all the other state offices. Better centralize power in the hands of a few known and responsible office holders than leave it in the hands of unauthorized party committees. The people can always call the former to account, but the latter, never.

The application of the short ballot to cities is involved in the commission plan of government (*see*) in which a small commission replaces the mayor and large council of divided powers. In New Jersey its application to the

OFFICIAL BALLOT

CITY ELECTION
SIOUX FALLS, S. D.
TUESDAY, APRIL 19th, 1910

For Commissioner (Vote for one.)

O	W. H. HEISS
O	H. C. NEWELL
O	IRA SOULE

Ballot Used in the Sioux Falls, S. D., City Election, April 19, 1910.

county and state is illustrated. Here a small commission with the power of county management has been found to work effectively. This state also provides for the election of a governor and a bi-cameral legislature, but for no other state officer, not even a lieutenant governor. The centralizing of power and responsibility for administration in the hands of one man instead of scattering it among administrative boards with divided and conflicting powers makes for efficiency and publicity. The boldest application of this principle yet proposed is to abolish the double chamber legislature and replace the present systems by a commission organized after the manner of the city commission. The principle of the short ballot, then, is to remove all minor offices and some important ones from the ballot in the interest of magnifying the power and accountability of the few men who are chosen by an intelligent popular vote.

See Ballot; Ballot, Australian; Election System.

References: C. A. Beard, "The Ballot's Burden" in *Pol. Sci. Quart.*, XXIV (1909), 598; J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, ch. xii; R. S. Childs, *Short Ballot Principles* (1911); P. S. Reinsch, *Readings in Am. State Gov.* (1911), 364–383; R. S. Childs, C. A. Beard, A. C. Ludington, in Am. Pol. Sci. Asso., *Proceedings*, VI (1909), 65–99; C. L. Jones, *Readings on Parties and Elections* (1912), ch. viii.

Jesse Macy.

BALTIMORE. (Population 1910, 558,485). Baltimore is situated on the north-east bank of the Patapsco River and comprises an area of something over 31 miles. It was laid out under an act passed August 8, 1729. The town was made the county seat of Baltimore County in 1768 and, largely through the enterprise of Scotch-Irish and German settlers, became an important commercial place about that time. In 1776, the Continental Congress met in Baltimore and in 1784 the Methodist Episcopal Church was organized there. The first Roman Catholic bishopric in the United States was established at Baltimore in 1790. In 1797, Baltimore Town was incorporated as a city and the charter thus granted received no thorough revision until 1898, when a new charter was prepared by a commission and passed by the general assembly. The development of the western country gave a great impetus to Baltimore's trade and the far sighted enterprise of its merchants gave it a wide ocean commerce, especially with South America and with China, while the construction of the Baltimore and Ohio Railroad, beginning in 1827, strengthened the trade with the west. The attack of the British upon the city in September, 1814, failed. During this attack, Francis Scott Key wrote the national anthem, "The Star Spangled Banner." The popular name of the "Monumental City" is derived from the fact that the corner stone of an imposing shaft, the first monument erected to the memory of Washington, was laid in Baltimore in 1815. In 1851, Baltimore City was separated from Baltimore County, and, receiving its own court and sheriff, became a county-borough, to use the English phrase. The school system began in 1829, and the park system, with the purchase of Druid Hill Park, in 1860. By a wise provision, the cost of the purchase of the land for parks and their maintenance has been met by a tax upon the gross receipts of the street car lines, the first of which lines received its franchises

about the time the first park was opened. At first this was a tax of 20 per cent but has now been reduced to 9 per cent. The trade of the city suffered considerably during the Civil War and the first blood shed in that great conflict occurred on the passage of the Sixth Massachusetts regiment through the streets on April 19, 1861.

The University of Maryland was chartered in 1812, developing out of a medical school established some five years before. Its chief activity has been in its professional schools. The educational reputation of Baltimore was greatly increased by the opening of the Johns Hopkins University in 1876, and of the Johns Hopkins Hospital in 1889. The Woman's College was established in 1886, and has been quite successful. In 1910, its name was changed to Goucher College, after its founder.

In 1888, the area of the city was nearly doubled, by annexation of part of the "Belt" of suburbs. The great fire of February 7, 1904, destroyed almost all the commercial part of the city, but recovery from this terrible disaster came with remarkable quickness. Some of the streets were widened, and modern stores and warehouses were erected. The wharves which had been burned were bought by the municipality and reconstructed into a series of modern docks at an expense of nearly $6,000,000. Owing to the hilly character of its situation and the nature of the sub-soil, the city was long enabled to continue without an underground sewerage system. In the last few years, however, $10,000,000 have been expended and as much more will need to be spent in the construction of a complete and adequate modern sewerage system and disposal plant. Among the most important industries of Baltimore are the packing of fruit and oysters, making of clothing, copper works, and cotton duck mills.

The mayor is elected for a four year term and the city council is composed of two houses, known as branches. The second or upper branch is presided over by a president elected by the voters and is composed of 8 members, two from each of four districts. The first branch is composed of 24 members, one for each of the wards. The councilmen are elected at the same time as the mayor and for the same term. Heads of the city departments have seats, but no votes, in the first branch. The second branch confirms, or rejects, the mayor's appointments to office. Within the first six months of his term, the mayor may remove appointive officers at his pleasure, afterwards he must show cause for removal. He must appoint minority representatives on all boards. The comptroller is elected by the people for a four years' term and has oversight of the finances, which are under the direct control of a register, who is elected by the council on joint ballot. The taxes are collected by a special collector and there is a second collector of water rents and licenses. The mayor, city solicitor, comptroller, president of the second branch, and city engineer compose a board of estimates, which prepares an annual ordinance of estimates of expenditures for the city. This ordinance is submitted to the council, which may diminish but not increase it. The licensing of the sale of intoxicating liquors is in the hands of three commissioners appointed by the governor and the license fee has recently been raised to $1,000 annually. The control of the police force was taken from the municipal authorities about 50 years ago and has been placed in a board of three commissioners, who are appointed by the governor.

See Maryland; Municipal Government.

References: J. H. Hollander, *Financial Hist. of Baltimore* (1899); T. W. Griffith, *Annals of Baltimore* (1824); S. B. Nelson, Ed., *Hist. of Baltimore* (1898); T. J. Scharf, *Chronicles of Baltimore* (1874); *Baltimore City and County* (1881); B. Mayer, "Baltimore, as It Was and as It Is" in Richardson's *Baltimore* (1871); C. C. Hall, Comp., *Baltimore* (1912).

Bernard C. Steiner.

BANK, CENTRAL

Definition.—This term as used in popular or even expert discussion has no definite significance. It is applied to a bank which cares for public funds and disbursements, which has exceptional powers of issue, and which, because of its privileges, takes the leadership among banks, controls their action, and inaugurates financial policies which they must follow. The shareholders of such an institution may be private individuals, as in Germany, France, and England, but even where this is the case, control may be in the hands of the government, as in Germany. In France, the bank, though privately owned, is managed by the Government and by the shareholders, while in England the Bank of England is managed wholly by the shareholders.

Whatever may be the form of organization, the objects of a central bank, as the term is employed in current discussion at the present time, are more clear. Such an institution is designed to provide an elastic currency, maintain an adequate gold reserve, and control the money rate so as to avoid violent fluctuations. The European central bank is the depository of the reserves of other banks; is the depository of the government; and has a monopoly right of note issue. By discounting and rediscount-

ing commercial paper for other banks, and by lowering or increasing its rates, it regulates the interest rate, and influences the flow of gold; and by issuing or retiring notes it supplies needed credit or checks inflation.

Defects of American Banking System.—The question of the establishment of a central bank in the United States has recently assumed importance because of the defects of the existing system of scattered responsibility.

These defects may be summarized briefly as follows: (1) Inelasticity of note circulation. National banks, according to existing law, can issue notes only as government bonds are purchased and deposited in pledge for such notes, so that note issues do not vary according to commercial demand. It is estimated that in the autumn, from $150,000,000 to $200,000,000 of currency is needed to move the crops in the West and South. Checks are not available for the greater part of these operations, and, consequently, local banks are obliged to withdraw their balances from eastern reserve correspondents, and these in turn must reduce loans. This creates a stringency in the money markets; and until the curency returns from the interior, beginning in the early winter, the lending power of the eastern institutions is correspondingly hampered. Moreover, the fluctuations in the price of government bonds influence banks in purchasing such securities for purposes of note circulation. There may be a profit in selling bonds already held, or there may be a reluctance to purchase a further supply for fear the price may fall.

(2) Inadequate gold reserve. Each bank under the individualistic system created by the national banking law must keep a reserve. A part of this, except for banks in central reserve cities, may be deposited with other banks in reserve cities, but can be called upon at any time, being a demand deposit. The reserve is, therefore, scattered. In times of emergency or impending panic each bank prepares for the worst, and calls for the reserve which is on deposit in the reserve bank. Legal tender reserve is thus withdrawn from the larger business centers when the strain is heaviest. These institutions have not only to maintain the integrity of their own reserves in order to avoid the slightest suspicion of impaired credit, but also must be able to meet the demand for gold exports if such be required. Moreover, the requirement that the legal reserve be a fixed percentage of deposits, with the implied understanding that a deficiency in such percentage constitutes reprehensible weakness, ties up a large amount of legal tender money in a dead stock, small for each individual bank, but in the aggregate, totalling a large sum.

(3) Fluctuations in the money rate. As a result of the stringency caused by the withdrawals of balances by the interior banks, and the responsibility of each bank to protect its own reserve, banks are obliged to change frequently, and often violently, the rates on which loans will be made. Particularly is this true of call money rates in the financial center of New York. Time money rates are also affected, thus disarranging the plans of manufacturers, importers, and large corporations which are constantly in need of credit capital.

(4) Locking up of funds in the treasury. With the establishment of the independent treasury system (*see* TREASURY SYSTEM, INDEPENDENT) in 1846, it was provided that government receipts should be deposited in the treasury and sub-treasury offices, and though the system has been modified by subsequent legislation, the amount retained by the government in its own vaults is large. If business is active, and imports and customs receipts large, the volume of currency available for commercial use is lessened unless the disbursements by the government are correspondingly large.

Plans of Reform.—Various plans of banking reform have been proposed to remedy these evils, differing according to the emphasis laid upon the relative importance of the several defects named. In general, these plans may be divided into two classes; one insisting that the chief difficulty lies in an adequate volume of currency, and the other placing the emphasis upon the individualistic organization of the present banking system. Under the first class fall plans for an asset currency and proposals for an emergency currency, while under the other are projects for a central bank. Not until recently have suggestions for such an institution received a hearing, for in the public mind a central bank meant a revival of political and financial intrigue which marked the closing days of the Second United States Bank (*see* BANK OF THE UNITED STATES, SECOND). The panic of 1907 and the inability of banks to meet the emergency, however, stimulated interest in the discussion of a central bank.

Discussion of Central Bank.—Two leading objections are made: First, that such a bank would become a political agent of tremendous power in the hands of the administration; and second, that it would fall into the hands of capitalistic interests, associated with the speculative operations of Wall Street. Other objections are that such a bank would oppress existing banks, and that it would tend to a concentration of stock ownership—a movement which legislation in other fields is endeavoring to check. It is, moreover, asserted that the area of this country is too vast to make such a project practicable. Analogies drawn from European experience, where national boundaries are comparatively limited, and where business is more homogeneous, are not considered pertinent. The central banks in Europe, it is said, are the product of slow evolution; and it would be folly to attempt to introduce by statute so radical a change into a country which has been trained in other methods and traditions. Again, it is claimed that a central

bank, if a bank of banks, dealing only with banks, would find it impossible to investigate and pass upon the demands of all banks in accordance with rules of prudence.

The advocates of a central bank are in general agreement as to the necessity, in framing the details of a new measure, of avoiding political and stock jobbing entanglements. A strong endorsement of a central bank was given by the New York Chamber of Commerce in 1906, before the panic of 1907. According to that plan the central bank should be under the control of the government, through the appointment of a part of the board of management by the President of the United States; have branches in leading cities; deal only with banks; have a large capital; hold the gold reserve of the government; receive and disburse all public moneys; and redeem all forms of credit money, including national bank notes. Other plans have recommended that stock in the bank be open to purchase by the public as well as by banks; that it hold the reserves of other banks; that it issue notes only on short-time credit; that directors be elected by clearing-houses; and that dividends be limited.

Reserve Association.—In 1911, Senator Aldrich of Rhode Island proposed the establishment of a reserve association which has many of the characteristics of a central bank. By this plan there would be a central institution, with district branches. The reserve association would absorb the privileges of issue, act as a reserve agent for national banks, rediscount for them commercial short-time paper, and serve as a depository and banker for the Federal Government. The Government would have a voice, but not a controlling power, in the management. Such an institution would receive only Government and bank deposits, and not compete with other banks in ordinary business.

See Banking, Branch; Banking Methods; Banks and Banking, National; Clearing House; Currency Associations.

References: H. White, *Money and Banking* (4th ed., 1911), 433–445, 457–474; E. C. Robbins, *Selected Articles on a Central Bank of the U. S.* (1910), 5–13 (bibliography); R. E. Ireton, *A Central Bank* (1909); P. M. Warburg and O. M. W. Sprague, "Central Bank," in Am. Econ. Assoc. *Publications*, 3d Series, X (1909), 338–376. Davis R. Dewey.

BANK COMMISSIONS AND COMMISSIONERS. From the foundation of the republic bankers have been held to perform a semipublic function, and have therefore had to submit to restrictions on their methods of doing business. Corporate banks are subject to the general restrictions upon corporations, and in addition, on account of their limited liability and other privileges, are usually placed under special regulations by the government which has chartered them.

In some states and in the Federal Government, the authority charged with enforcing this responsibility to the public is an official subject to the dominion of a superior. The federal official is the Comptroller of the Currency (*see*) who has under him a force of bank examiners who from time to time report on every bank in the national system. Few of the states have so well organized a system, the state treasurer or some similar official being usually alone responsible. The fact that none but national banks issue paper currency simplifies the business. Nevertheless in five states there is (1912) either a single commissioner as in New York, or a board of commissioners as in Virginia, who have general supervisory authority, and institute examinations of the chartered banks and trust companies under the state jurisdiction. Some states have a separate savings bank commissioner. These officers have authority to close a bank if they deem it is in a tottering condition. By a statute of 1911 the legislature of New York brought private bankers and banking firms under the supervision of the bank commissioner; and throughout the country there is a movement for closer supervision of all banking operations.

See Banking, Public Regulation of.

References: *Am. Year Book, 1910*, 333, and year by year; Commissions and Commissioners *Reports*; U. S. Secy. of the Treasury, *Annual Reports*. Albert Bushnell Hart.

BANK DEPOSITS. Deposits in banks are everywhere considered a suitable subject for governmental regulation. In the charters of some savings banks is a provision that no individual deposit shall exceed a particular sum; and such banks are allowed in case of need to postpone the payment of deposits—usually for sixty or ninety days. The laws of some states, notably Massachusetts, also require savings banks to advertise unclaimed deposits and after a certain length of time to transfer them to the state.

No such limitations exist on deposits in regular banks; unless by contract agreement expressed in a formal certificate of deposit, having a specified time to run, or by other contract limitations, the depositor in a bank is entitled to draw any money lying to his credit on demand. Deposits are almost invariably drawn by check, which may be presented over the counter or deposited in some other bank for collection, direct or through the clearing-house. The depositor is entitled to draw out his funds although he may have unmatured loans in the bank; but bank deposits are subject to attachment for debt by the usual legal process.

Banking corporations, national or state, are usually forbidden to keep open accounts with debit balances unsecured; and the wilful permitting of a serious overdraft may constitute

an offense cognizable by the courts. In case of bankruptcy of a bank, depositors share with other creditors, except that small balances are sometimes a preference to be paid in full; but in most banks the depositors, as well as other creditors, can enforce a limited liability upon the stockholders—commonly an amount equal to their stock-holding.

The deposits in banks June 30, 1912, were stated as follows:

National Banks	$5,825,000,000
State Chartered Banks	2,920,000,000
Loan and Trust Companies	3,675,000,000
Private Banks	153,000,000
Savings Banks	4,457,000,000
Total	$17,024,000,000

See under BANKING; BANKS.

References: W. A. Scott, *Money and Banking* (1902); J. J. Knox, *History of Banking in the U. S.* (1900); National Monetary Commission, *Reports*; C. A. Conant, *Principles of Money and Banking* (1905); O. M. W. Sprague, *Banking Reform* (1911); "History of Crises under Nat'l Banking System" in *Senate Doc., 538*, 61 Cong., 2 Sess. (1910), 538; Dept. of Commerce and Labor, *Statistical Abstract of U. S.* (annual). ALBERT BUSHNELL HART.

BANK DEPOSITS, GUARANTY OF. As the result of the panic of 1907, when reserve city banks refused to surrender the deposits of country banks, the latter were unable to obtain funds to meet the demands of their depositors. This led to two consequences: suspicion by depositors that their deposits were not safe even if not lost; and stoppage of trade in those sections where cash payments had been the rule. This led to a renewed agitation in several of the western states for the insurance or guaranty of bank deposits. The movement began in Oklahoma, and in less than two months after the beginning of the panic, a law was enacted for the organization of such a plan. The system adopted was one of mutual insurance; each bank paid into a common fund one per cent of its average deposits, and if this fund be exhausted, was made liable for a special assessment. All state banks were compelled to accept the plan, and national banks were given the privilege; but they were unable to accept, owing to an adverse ruling of the Comptroller of the Currency. In Kansas a guaranty law was passed in 1909, but it remained optional with banks to insure their deposits; and all banks were shut out which paid more than three per cent interest on deposits. Deposits of other banks were excluded from the guaranty. The basis of assessment also allowed deductions according to the capital and surplus of a bank. Nebraska and Texas authorized guaranty plans in 1909. That of Texas has the novel feature of permitting a bank to contribute to a guaranty fund, or to give an acceptable bond of indemnification to an amount equal to its capital stock, and not less than one-half its deposits. Attempts to secure legislation in Washington, South Dakota, Montana, and Missouri failed, and the question was passed upon in Colorado by a referendum in 1912.

There was much opposition to these plans of insurance, first, because it makes good banks contribute for the mistakes and bad management of inefficient banks; and second, because it tended to promote the establishment of weak and speculative institutions. Constitutional objections were raised on the ground that the levy of an assessment against the will of a bank was taking property without due process of law, and was an impairment of contract. The Supreme Court, however, in 1911 sustained the constitutionality of this legislation, holding that a contract was not impaired, sinee a bank's charter is subject to alteration or repeal; and under the police power of a state "an ulterior public advantage may justify a comparatively insignificant taking of property for a private use" (Noble State Bank *vs.* Haskell, 219 *U. S.* 104).

The plans have not been long enough in operation to justify definite conclusions. At first the state banks in Oklahoma prospered at the expense of the national banks, which could not come under the system. Later, on account of failures of state banks, with consequent assessments, a considerable number of state banks were converted into national banks, in order to escape future liabilities. The commissioner of banking has also had some difficulty in securing payment of assessments. September 30, 1911, the excess of assets of the fund over immediate liabilities was $1,335,000. In Kansas and Texas there has been less open opposition, and the new laws do not appear to have affected a marked change in banking relationships. An indirect result of guaranty legislation in the West has been the enactment of stricter banking laws.

See BANKING, PUBLIC REGULATION OF; BANKS AND BANKING ACTS, NATIONAL; BANKS AND BANKING, STATE.

References: T. Cooke, "Insurance of Bank Deposits in the West" in *Quart. Journ. Econ.*, XXIV (1910), 85–108, 327–391; *Am. Year Book, 1910*, 342–4, *1911*, 309–311, and year by year. DAVIS R. DEWEY.

BANK NOTES. See BANKING METHODS; BANKING, PUBLIC REGULATION OF; BANKS AND BANKING ACTS, NATIONAL; COINAGE AND SPECIE CURRENCY IN THE UNITED STATES; COMPTROLLER OF THE CURRENCY; GOLD CERTIFICATES; LEGAL TENDER CONTROVERSY; PAPER MONEY IN THE UNITED STATES.

BANK OF NORTH AMERICA. At the urgent request of Robert Morris, Congress in 1781 incorporated the Bank of North America in order to provide financial assistance to the Government in a time of

great emergency. This bank, the first in the United States, was established at Philadelphia, with a nominal capital of $10,000,000, of which only $70,000 was paid in by private subscribers. Aided, however, by a Treasury subscription of $250,000 in specie, the bank was enabled to lend its credit not only to the Government but also to private individuals who had claims against the Government. Popular sentiment was aroused against it when peace was established, on the ground that it represented capitalistic powers fostered by the general Government; it therefore gave up its national status in obtaining a charter from the state of Pennsylvania. See BANK OF U. S., FIRST; MORRIS, ROBERT. References: J. J. Knox, *Hist. of Banking in the U. S.* (1900), 26–27; E. P. Oberholtzer, *Robert Morris* (1903), 73 *et seq*; L. Lewis, Jr., *Hist. of Bank of N. Am.* (1882); bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), § 169. D. R. D.

BANK OF THE UNITED STATES, FIRST. In 1791 Congress chartered a Bank of the United States, later known as the First. The capital was $10,000,000 of which the Government subscribed one-fifth. To make a market for government bonds, three-fourths of the subscriptions were made payable in United States stock. In addition to the parent bank located at Philadelphia, there were eight branches in the most important seaboard cities. In return for the charter the bank was required to loan $2,000,000 to the Government, thus offsetting the Government's stock subscription. By 1802 the Government sold all of its holdings in the bank at a premium of $672,000. The dividends received also showed a profit of over 8 per cent. The bank rendered a further service to the Government in caring for its funds. Though the bank was well managed, a recharter in 1811 was refused, because of: (1) the opposition of state banks; (2) political antagonism of a certain element in the Republican party which claimed that the bank was an instrument of federal centralization. The large amount of foreign holdings of the bank's capital excited criticism. See BANK OF NORTH AMERICA; BANK OF U. S., SECOND. References: J. T. Holdsworth, *First Bank of the U. S.* (1910), *Senate Doc.*, 61 Cong., 2 Sess., (1910), No. 571; D. R. Dewey, *Financial Hist. of the U. S.* (1907), 96–101, and bibliography.
D. R. D.

BANK OF THE UNITED STATES, SECOND. Although there was much opposition on the ground of unconstitutionality, a second United States bank was chartered in 1816 to run for twenty years. As the first bank was established to assist the credit of the Government, the second had for its chief object the restoration of the currency due to the suspension of specie payments in 1814, and the embarrassments occasioned by reckless speculation of state banks, particularly in the South and West. The capital was placed at $35,000,000 of which the Government took $7,000,000. To secure the charter the bank paid a bonus of $1,500,000 in installments. The bank also agreed to transfer public funds within the United States without charge and to act as commissioner of loans. In return it held the deposits of the Government, subject to order of the Secretary of the Treasury. More than 25 branches were established. At first mismanaged, in 1818 under the presidency of Cheves it recovered, and later (1825) under the management of Biddle became prosperous and a powerful financial institution. In 1829 it aroused adverse criticism from President Jackson. Although investigating committees reported in favor of the bank, Jackson's hostility became more pronounced. In 1832 he vetoed a bill for recharter and in the following year ordered the removal of the Government deposits. The bank became a political issue and lost. Converted in 1836 into a state bank, it became involved in speculative operations and was forced into liquidation. See BANKS AND BANKING ACTS, NATIONAL; BANK OF U. S., FIRST; DEPOSITS, REMOVAL OF; IMPLIED POWERS. References: R. H. H. Catterall, *Second Bank of the U. S.* (1903); D. R. Dewey, *Second U. S. Bank, Financial Hist. of U. S.* (1903), 145–157, 200–208, bibliography, 143, 197; Channing, Hart and Turner, *Guide to Am. Hist.* (1912). D. R. D.

BANK TAXES. In addition to ordinary taxes on their real estate, taxes may be imposed upon the capital, circulation, or deposits of banks, and by federal or state authority. The Federal Government at present taxes the circulation of national banks at the rate of one half of one per cent per annum; and the circulation of state banks at ten per cent. The former tax is for revenue, yielding in 1910 $3,464,000; the tax on local circulation is prohibitory, designed to drive out of use all state bank issues. Until 1883 national banks were taxed on their capital and deposits, and during the operation of the Spanish War Revenue Act of 1898, on capital. The total taxes paid on capital, surplus and deposits from 1863 to 1910 were $76,000,000; and on circulation, $111,000,000.

The states generally tax the capital of banks, either under the general corporation tax or by a special tax. In New York, for example, there is a tax of one per cent upon the value of the shares, the value being determined by adding the amount of the capital stock, surplus, and undivided profits and dividing the sum by the number of shares. In the District of Columbia, banks pay six per cent upon the gross earnings. In California, bank stock is not taxed. In a few states the deposits of mutual savings banks are taxed to

the banks, as in Massachusetts, $\frac{1}{2}$ of 1 per cent; in Vermont, $\frac{7}{10}$ of 1 per cent; Maine $\frac{5}{16}$ of 1 per cent; and New Hampshire, $\frac{3}{4}$ of 1 per cent. Outside of New England, however, deposits are taxed to the depositor as other credits due from solvent debtors.

See Banking Acts; Banks and Banking Acts, National; Banks and Banking, State; Corporations, Tax on.

References: A. K. Fiske, *Modern Bank* (1905), 194; C. C. Plehn, *Introduction to Public Finance* (1909), 263–65; H. G. Friedman, *Taxation of Corporations in Massachusetts* (1907), 141–154; C. A. Conant, *Principles of Money and Banking* (1905), II, 272–276, referring to European methods; Comptroller of the Currency, *Annual Report*. Davis R. Dewey.

BANKING, BRANCH. In the first half of the nineteenth century, the United States had considerable experience with branch banking. The First Bank of the United States (*see*) established eight branches in accordance with its charter privilege, and the Second Bank (*see*) had twenty-five. Some of the state banks also enjoyed the branch privilege, notably the State Bank of Indiana, chartered in 1834. The capital of the branches of the two federal banks was furnished by the parent bank, and allotted as need arose, while in the case of the Indiana bank the capital of the branches was furnished in part by the state. The management of the branches of all three was in the hands of local boards of directors, subject to the central board.

The special advantage claimed for branch banking is the opportunity it affords for distributing the capital of the bank over a wider area, and more particularly in districts where there is the most urgent demand. As a result, interest rates are equalized in different parts of the country. Under such a system it is possible to concentrate reserves, and to control their use under one management. Again, branch banking makes it possible for a business enterprise in a small town to secure ample credit through the home agency, instead of, as is frequently the case in the United States, being obliged to place its paper in the hands of outside brokers who do not have an intimate knowledge of the borrower's standing and needs. Again, under branch banking an agency can be established in a town too small to support a separately organized bank.

Under the National Banking Act no national bank can establish branches. State banks in some states, however, may have this privilege, as, for example, in New York since 1898, but this privilege is exercised only within a limited district. For example, the Corn Exchange Bank of New York City has ten branches, established more for the convenience of depositors than as a means for distributing loans or equalizing money rates.

Objections are made to any change in the national banking system whereby banks would establish branches over a wide area, on the ground that it would enable the stronger banks, more particularly in New York, to extend their power and bring the smaller cities and agricultural sections under the direct influence of concentrated capital.

The working of branch banking at the present time is best seen in Scotland and Canada. In the former there are twelve banks with more than a thousand branches; in the latter there are nearly two thousand branches. The experience of the latter country, with its widely extended territory, in maintaining uniform rates of interest, has favorably impressed many students of the banking problem as justifying imitation by the United States.

See Bank, Central; Banks and Banking, State; Bank, United States, First; Bank, United States, Second.

References: U. S. Monetary Commission, *Report* (1898), 376–386; H. White, *Money and Banking* (4th ed., 1911); C. A. Conant, *Hist. of Modern Banks of Issue*, 409–411, 570–572.

Davis R. Dewey.

BANKING METHODS. Banks are primarily engaged in making loans and caring for deposits. Incidental to these two main functions a bank may carry on a variety of operations, such as the transfer of credits, at home and abroad, dealing in domestic and foreign exchange, collection of checks, issue of notes, and investment of funds in securities. Not all banking institutions undertake all these operations; only national banks now issue notes in the United States. Savings banks do not deal in exchange or ordinarily in collection of checks; savings banks and trust companies are more concerned with investment in securities than are national banks.

Deposit Business.—The deposit business in banks is simple in its operation. In savings banks deposits are generally received in the form of money actually passed over the counter, acknowledgment being made by an entry on a pass-book retained by the depositor. Such deposits are accepted on the general understanding that they are not to be immediately withdrawn; and that if required, notice in advance shall be given; the notification, however, is in practice usually waived, except in times of financial stress. Interest is paid on the deposits, which in turn are invested by the bank in stable securities, as bonds and mortgages. In many of the states the choice of securities is carefuly prescribed by law.

Discounts.—Deposits in a commercial bank often arise in a different way, as from the sale of a credit to the depositor in return for some evidence of private credit which the depositor wishes to dispose of, or as a result of a loan made by the bank to the depositor. For example, A holds the note of B due in

sixty days; he wishes to convert this into credit which is available in the form of cash as needed; he sells B's note to the bank and obtains its value less the amount of interest calculated in advance. This is termed discounting a note. The bank thus obtains interest on its loan at once, and through its subsequent use earns an interest on the interest. As a rule a bank discounts mercantile notes, "paper," only for its own customers. In such operations the customer, or seller of the note, endorses the note, thus giving to the bank the pledge not only of the original maker of the note but that of the seller who is known to the bank. The rate of discount depends upon the credit of the parties of the transaction, as well as upon the state of the money market. Advances are more commonly made by the bank on the borrower's own note, which is offered for discount. If signed only by the applicant, the note is known as "single-named" paper; if endorsed, as "two-named" or "double-named" paper. Such notes are likely to run for a longer period than bills receivable, and may extend for four or even six months. Notes of this character are also more freely granted to those who are not regular depositors and are often made through the intermediate agency of a note-broker who buys the note and then sells it to a bank. In Europe it is a common practice for a bank to raise funds, if needed, by selling unmatured notes in its possession to another bank, as by banks in Berlin to banks in Paris, when there is a money stringency in the former city. By this means banking capital is kept in a liquid state, thus equalizing rates of interest and relieving local financial strain. This operation is known as rediscounting. The practice has not been developed in this country, owing to the restrictions of the National Banking Act.

Loans on Collateral.—Loans may also be made on collateral; that is, by the pledge of security instead of the sale of an evidence of indebtedness. Such security may be bills receivable already referred to, or more commonly stock and bonds. The borrower in this case gives his note, and deposits certain securities with the bank with power of attorney to the bank to sell the securities, if the note be not paid when due. For such securities only bonds and stocks which have a ready market at the stock exchange are as a rule available; and the banker demands that the market value exceed the amount of the loan by a considerable margin, 20 to 30 per cent. These loans may be either call (demand) or time loans. For the former the rate of interest fluctuates, while for the latter the rate is fixed according to a predetermined agreement. The rate of call loans is usually calculated by the day and may vary from 2 to 60 per cent annual rate, or even higher in case of a crisis, while for time loans the rate is more stable, ranging between 4 and 6 per cent. New York City is the great call loan market, due to the fact that national banks in that city are the reserve agents for a great many country banks. They consequently have large sums on deposit which may be called for at any time by their correspondents and which cannot be safely locked up in time loans. There is also a great demand for call loans by stockholders who, owing to the fluctuation in speculative operations, are unwilling to tie up their capital in long-time obligations.

Among the services performed by a bank is furnishing a system whereby customers may transfer funds on deposit by means of orders known as checks, drafts, certificates of deposit, and money orders. A check is an order on a bank for the payment of money held on deposit. In order to make the check more acceptable, the drawer may secure from the bank a certificate that the check is backed up by funds. This is known as a certified check, and when issued the depositor's account is accordingly charged. A cashier's check is a bank's order on its own funds. Such orders are more satisfactory than checks when remittances have to be made for long distances, or when the financial standing of an individual drawer of a check may be unknown; or when there is a desire to make a more prompt transfer of funds. In strict practice a personal check when received is not credited to the account of the holder until the money has been obtained thereon from the place where the deposit is originally lodged. The use of the cashier's check may obviate this delay. A bank in Boston keeps an account against which it can draw in New York. By selling its check in Boston on its New York balance, the receiver of the check in New York is able at once to liquidate the transaction. Certificates of deposit on which interest is allowed may be transferred by endorsement.

Exchange.—In the operations of exchange, whether domestic or foreign, the methods are more technical, involving the use of drafts, and in the case of foreign exchange demand delicate adjustments of different monetary systems. A personal draft is drawn by one person upon another; it may be an order of one person upon another to pay a third, or it may be an order to pay the drawer himself. A draft may be payable "at sight" or upon a specified date. When for the latter, it is presented to the drawer as soon as received, for acknowledgment of the obligation by writing across the draft the word "accepted." It is then technically known as an acceptance. Drafts or bills of exchange are bought and sold by banks and through these operations indebtedness of one city or country is offset against the debt which is due, and thus the transfer of actual cash is greatly lessened. The par of exchange between the United States and England is $4.866 (that is, the gold in a pound sterling is exactly equiv-

alent in value to the gold in $4.866). Exchange is high when a premium has to be paid, indicating that the indebtedness of the United States to England is greater than that of England to the United States. The premium naturally does not rise higher than the cost of transporting gold, in the case of foreign exchange, about 3 cents per pound sterling; or of transporting currency, in the case of domestic exchange, varying from 10 cents to $2.00 per $1000.

Collection.—Banks frequently make a slight charge for the collection of checks drawn on banks outside of the Clearing House (*see*) or upon banks at a distance. The usual rate is one-tenth of one per cent, but not less than ten cents. If a check when presented at the bank upon which it is drawn is found not to be supported by funds to the credit of the maker, it is protested and returned with a charge for notarial fees, thus forcing banks to use caution in receiving checks from irresponsible persons.

See Bank, Central; Bank Deposits, Guarantee of; Banking, Branch; Banking, Public Regulation of; Bank, Savings; Banks and Banking Acts, National; Banks and Banking, State; Banks, Examination of; Clearing House.

References: A. K. Fiske, *The Modern Bank* (1905); F. A. Cleveland, *Funds and their Uses* (1902), 30–78, 209–228, 240–264; S. S. Pratt, *The Work of Wall Street* (1912), 252–265, 292–311, 321–339; H. White, *Money and Banking* (4th ed., 1911), 193–215; C. F. Dunbar, *Theory and Hist. of Banking* (1900), 1–81; W. M. Scott, *Money and Banking* (1903), 117–142, 218–238, 273–292; H. T. Easton, *The Work of a Bank* (2d ed., 1900); W. Bagehot, *Lombard Street* (1873), a description of the London money market; D. Kinley, *The Use of Credit Instruments in Payments in the U. S.*, and O. M. W. Sprague, *Hist. of Crises under the National Banking System*, both issued by National Monetary Commission (1910).

Davis R. Dewey.

BANKING, PUBLIC REGULATION OF. No business in the United States has been subject to public regulation more than that of banking. At the close of the eighteenth century there was but a small amount of accumulated wealth in the United States and that was profitably employed in agriculture, shipping and manufactures. There were but few private bankers and all of them carried on other kinds of business. With the expansion of industry and commerce under the stimulus of political independence, the need of credit institutions was felt. As the capital of a single individual was insufficient, corporations were chartered (*see* Corporations); and as the grant of a charter was a legislative privilege, all acts of incorporation at the time being under special charters, the business of banking, its powers, rights, and responsibility, came under legislative review.

This control has been jealously retained. Regulation is applied to the method of organization of a bank, its management, its loans, the protection of depositors through reserves, note issues, reports, examinations, and the settlement of a bank's affairs in case of insolvency or voluntary liquidation. Only the briefest summary of the details of this control can be given here, and for the most part this will relate to the regulation of national banks.

United States National Banks.—At least five persons must join for the organization of a bank. The organiziers must be of good character, evidence must be shown that there is need of a bank in the locality named, and certain payments must be made before a certificate is granted. Specific rules are laid down as to capitalization. The charter is limited to twenty years. Five directors are required, each of whom must own ten shares of the bank's stock—an investment of $1000. Shareholders are subject to double liability. For the protection of depositors, each bank must keep a reserve; for this purpose banks are divided into three classes, central reserve, reserve, and all others, generally called country banks. The central reserve cities are New York, Chicago, and St. Louis; banks in these cities must individually hold a legal tender cash reserve of 25 per cent against deposits. In reserve cities, of which there are nearly one hundred, banks must have a reserve of 25 per cent, but one half of this may be kept in a central reserve bank. All other banks must have a reserve of 15 per cent, three-fifths of which may be redeposited in a reserve city bank. If the reserve falls below the legal limit, the bank must cease to make any other discounts except by the purchase of bills of exchange; and cannot declare any dividend until the reserve has been restored. Upon special deposits made by the Government a national bank must pay interest not less than one per cent. It must also secure the Government by making a pledge of collateral securities.

There are but few restrictions on the making of loans. Any rate of interest legalized by the state in which the bank is located may be charged. Loans may not be made on real estate, nor shall more than one-tenth of the capital be loaned to any one person or corporation. This restriction, however, does not apply to the discount of bills of exchange drawn against existing values, as of commercial paper owned by the person offering it for sale. Nor can total indebtedness, exclusive of note issues, deposits, and drafts drawn against its own funds, and dividends payable, exceed the capital of a bank.

Notes can be issued only on the deposit of Government bonds and not in excess of capital. The notes are not a legal tender, but are receivable between banks and by the Government

Treasury except for duties on imports. No notes can be issued in a denomination of less than $5.00 and only one-third of the total issue in a denomination as low as $5.00. Each bank must be prepared to redeem its own notes at its own office, and in addition must keep a redemption fund of five per cent on deposit with the Treasurer of the United States. Formerly a bank paid a federal tax on its capital, deposits and circulation, but since 1883 taxation applies only to circulation (*see* BANK, TAXES). Such taxation, however, does not exempt a bank from state taxation on its stock.

The condition of a bank must be reported upon to the Comptroller of the Currency at least five times a year. This federal officer also has power to appoint examiners to examine in person the management and officers of the bank; and as a rule each institution is thus investigated annually. In case of failure of a bank the Comptroller appoints a receiver who winds up its affairs under his supervision.

State Banks.—The regulation of state commercial banks varies in the several states. In most of the states control is less strict than that of the federal authority. State banks cannot, by federal law, issue notes except by payment of a practically prohibitive tax of ten per cent. On the other hand state laws do not forbid loaning on real estate. Requirements as to reserves and supervision are also as a rule less rigorous.

The present tendency is to increase regulation in the direction of the administrative management of banks and to give the banks greater freedom in note issue and discounting. Bank failures as a rule are due to imprudent if not dishonest management, or to gross violation of sound principles in making loans. The Comptroller of the Currency is therefore, under the general authority of supervision conferred upon him, making examinations more strict. But it is difficult even for examiners to determine the value of a bank's collateral and commercial paper upon which loans have been made. Moreover, a bank is often organized by persons who have had little or no experience in the business. Public regulation will, therefore, have to be supplemented by greater care in the selection of officers, and a recognition that banking is a technical business, requiring special professional training.

See BANK, CENTRAL; BANK DEPOSITS, GUARANTEE OF; BANKING METHODS; BANK, SAVINGS; BANKS AND BANKING ACTS, NATIONAL; INTEREST.

References: A. K. Fiske, *Modern Bank* (1905), 186–195; W. M. Scott, *Money and Banking* (1903), 159–188; U. S. Comptroller of the Currency, *Annual Report*; *Am. Year Book, 1910*, 340, and year by year; D. R. Dewey, *State Banking before the Civil War* (1910); G. E. Barnett, *State Banks and Trust Companies since the Passage of the National Bank Act* (1911); R. E. Chaddock, *Safety-Fund Banking System in New York* (1910); S. A. Welldon, *Digest of State Banking Statutes* (1910), all issued by National Monetary Commission; "Banking Problems in America" in Acad. Pol. and Soc. Sci., *Annals*, Nov., 1910.

DAVIS R. DEWEY.

BANKRUPTCY AND COMMERCIAL FAILURES. Development.—A system of bankruptcy legislation prevails throughout the world, with the exception of some Asiatic and South American countries. The United States is unique among nations in having had an intermittent bankruptcy law. The first act was passed in 1800; it was repealed in two years. In 1841 a second act was passed, which lasted about the same length of time. In 1867 the third act was passed and repealed in eleven years. The present law came into being in 1898. Although several attempts have been made to repeal it, three amendments have served to correct its defects and it will probably endure for many years.

In this legislation, as in many other respects, the United States has borrowed from England. The first law in England was passed in the time of Henry VIII, and although frequently amended has never been repealed. The early history of bankruptcy legislation was marked by great severity to the bankrupt, considering his failure as largely criminal. In Queen Anne's reign for the first time a discharge from his liabilities was granted. The practice of involuntary bankruptcy was enlarged to enable a bankrupt to file a voluntary petition; and in 1861 non-traders were brought within its scope.

The Constitution of the United States authorizes Congress to pass a uniform bankruptcy law (Art. I. Sec. viii, p. 14). While there was no national act many states had insolvency and assignment laws under which courts were enabled to grant a discharge to the insolvent relieving him from further liability. They were often unequal, and as divergent in their systems as the legislatures were numerous. Some states gave priority to local creditors.

Voluntary and Involuntary.—The present law provides for petitions both voluntary and involuntary. All persons and corporations are subject to the voluntary provisions, with the exception of banks, railroads, insurance and municipal corporations. In involuntary proceedings, there are the same exceptions with the addition of farmers and wage earners.

Jurisdiction is conferred in involuntary proceedings by petition of creditors having claims amounting to $500 filed in a district court of the United States alleging the insolvency of the bankrupt, the existence of debts amounting to $1,000, and the commission of an act of bankruptcy, *viz.*, the concealment of his property, the giving of a preference, the making of an assignment, the appointment of a receiver because of his insolvency, or the admission in

writing of his inability to pay his debts and willingness to be adjudicated a bankrupt.

Procedure.—The procedure, where there are assets, allows the appointment of a receiver by the court, and provides for the election of a trustee by the creditors, in whom vests the title of the property. After the adjudication the subsequent administration is under the jurisdiction of a referee (*see* REFEREE). A composition may be effected on terms accepted by the creditors and approved by the court and the proceedings dismissed.

Power to carry on the business in the interest of creditors is given to receivers and trustees and is frequently exercised. The exemptions allowed debtors by the various states are unaffected by the provisions of the Federal Bankruptcy Act.

If a bankrupt has committed none of the enumerated offenses of the act he may have his discharge relieving him from further liability to his creditors. Failure to obtain discharge from bankruptcy leaves him still liable for unpaid debts.

Effectiveness.—The summary power of the court to seize the property of the bankrupt, the facilities for procuring a full disclosure of his transactions by examining him and others in court, the prohibition of preferences to any creditor to the damage of others, the expeditious proceedings for reducing the assets to money, the informal and rapid disposition of claims filed and settlement of disputes, and, withal, the economy with which it is all done have vindicated the wisdom of the present law and have probably establisned its permanency.

It may be well to correct an erroneous impression that the primary object of the bankruptcy law is the discharge of the bankrupt. Justice Miller in Wilson *vs.* City Bank (17 *Wall.* 417), says: "The primary object of the bankruptcy law is to make a just distribution of the bankrupt's property among his creditors; the secondary object is the release of the bankrupt from the obligation to pay his debts."

See BANKRUPTCY, CONSTITUTIONAL PROVISIONS AFFECTING; BUSINESS, GOVERNMENT RESTRICTION OF; REFEREE IN BANKRUPTCY.

References: E. T. Baldwin, *Treatise on the Law of Bankruptcy* (8th ed., 1900); W. M. Collier, *Law and Practise in Bankruptcy* (9th ed., 1912); E. C. Brandenberg, *Law of Bankruptcy* (3d ed., 1913); F. O. Loveland, *Treatise on Law* (1912); Harold Remington, *Treatise on the Bankruptcy Law* (1908); S. W. Dunscomb, Jr., *Bankruptcy, Study in Comparative Legislation* (1893); Hagar and Alexander, *Forms and Rules in Bankruptcy* (1910); *Am. Year Book, 1910,* 588.

SIDNEY CORNING EASTMAN.

BANKRUPTCY, CONSTITUTIONAL PROVISIONS AFFECTING. By the Constitution of the United States, Congress is authorized to establish uniform laws on the subject of bankruptcies throughout the United States (Art. I, Sec. viii, 8, ¶ 4). Bankruptcy laws commonly provide for ascertaining the amount of persons' indebtedness and for the distribution of property among creditors, and it may also provide that the debtor shall be discharged from further liability. It is competent for Congress to provide for voluntary as well as involuntary bankruptcy. In the absence of congressional enactment states can enact bankruptcy laws, subject to the provision against impairing the obligations of contracts, and a state enactment is not made void by the passage of a federal act, but made inapplicable or unenforceable during the continuation of the federal act. **References:** E. McClain, *Constitutional Law* (1905), 177; J. R. Tucker, *Constitution of the U. S.* (1899), II, 559–565; Sturges *vs.* Crowninshield, 4 *Wheaton* 122; Butler *vs.* Goreley, 146 *U. S.* 303.

A. C. McL.

BANKS AND BANKING ACTS, NATIONAL

Original Acts of 1863 and 1864.—The national banking system was established by the act of February 25, 1863. There were two principal reasons for its support: first, the desire to provide a market for United States bonds; and second, the wish to supplant the system of local and state bank issues with its thousands of different notes characterized by wide fluctuations in volume, by a currency uniform in character, resting upon federal authority. A minor reason was to restrict bank circulation, so as to give full play to the use of Government Treasury notes. As the law of 1863 was quickly revised by the act of June 3, 1864, the provisions of the latter may be advantageously selected for the purposes of this analysis.

The capital required of a bank was proportioned according to the population of the place in which the bank was located; in towns of not more than 6,000 inhabitants, at $50,000; in cities from 6,000 to 50,000 at $100,000; and in cities of more than 50,000, at $200,000.

Each association must deposit, as conditional to beginning business, United States bonds to an amount of not less than $30,000, or one-third of its capital; and upon the pledge of these securities circulating notes might be issued to the bank by the Comptroller of the Currency, equal to 90 per cent of the par value of the bonds, but not exceeding the capital of the bank. The total volume of such circulation was limited to $300,000,000, one-half of which was apportioned according to the population

and the other half with due regard to existing bank capital and business. The notes were legal tender for all dues to the Government except duties on imports, and for all debts due by the Government except interest on the public debt and the redemption of the notes themselves. No bank could hold real estate except what was needed for its business, or loan on real estate mortgages.

A reserve of 25 per cent against deposits and circulation must be kept by banks in certain larger cities, seventeen in number, specifically enumerated; and of 15 per cent by associations in other cities. Three-fifths of the reserve of the banks in cities of the latter group might be kept in reserve city banks, and a bank in a reserve city could keep one-half its reserve in a New York city bank. Each association must select a redemption agency in New York. From the net profits a surplus equal to 20 per cent of the capital must be accumulated. The banks were made depositories of public funds with the exception of receipts from customs duties.

Amendments, 1865–67.—In 1865, March 3, in order to force the state banks to a more rapid conversion to the national system, a tax of 10 per cent was placed upon their notes. By another act of the same date the amount of notes to be delivered to a bank on deposit of bonds was further defined by a graduated scale in proportion to capital, ranging for banks with capital of $200,000, or less, at 90 per cent of notes up to banks with capital of over $300,000,000, at 60 per cent. In 1870, June 12, an increase of $54,000,000 in total volume of notes was authorized, and in order to secure the widest possible advantage in the privilege of note issue, the circulation of a single bank was limited to $500,000. By the act of June 20, 1874, the requirement of a reserve against note liability was repealed and, as a substitute, each bank was obliged to establish a redemption fund with the Treasurer of the United States equal to 5 per cent of the circulation, such fund, however, being made a part of the required reserve against deposits. Redemption agencies in cities were at the same time abolished. All restrictions on the total volume of circulation were removed by the act of January 14, 1875.

In 1882, July 12, the discrimination against banks with large capital, which up to this date could obtain a less percentage of notes in proportion to capital, was repealed, and all banks were placed on the same footing, but no association could receive circulation in excess of 90 per cent of the capital. Banks, however, with a capital of $150,000 or less were permitted to organize on the holding of bonds of one-fourth instead of one-third of the capital. In 1887, March 3, any city of 50,000 inhabitants was made eligible to be placed upon the list of reserve cities, and any city of 200,000 inhabitants might be considered eligible for the privilege of a central reserve city.

Amendments, 1900–1908.—The act of March 14, 1900, introduced important changes. A new scale was established governing the size of capital in proportion to the population in which the bank was established, and opportunity was given to organize a bank in a town of less than 3,000 inhabitants with a capital of $25,000. The volume of circulating notes issued to a bank was increased from 90 per cent to the par value of the bonds deposited. Banks substituting the new 2 per cent bonds authorized under the refunding section of the act, were relieved of a part of the tax on circulation (*see* BANK TAXES). In 1903, March 3, the privilege of being a reserve city was extended to cities of 25,000 population. By the act of March 4, 1907, national banks were made depositories of all the public moneys, thus doing away with the discrimination against custom receipts. Under the act of May 30, 1908, known as the Aldrich-Vreeland Act, banks were granted the privilege of issuing supplementary emergency currency subject to a special tax. To secure such privilege a bank could join a national currency association, or in its individual capacity make application for additional circulation upon the deposit of state or municipal bonds, such circulation being subject to a tax of 5 per cent for the first month, increasing by monthly increments to 10 per cent.

Growth.—During the first two years of the act not many associations were formed, but when the tax was applied to local circulation the number greatly increased. The growth of the system was as follows, in millions of dollars:

Year	No. of Banks	Capital	Circulation	Bonds Held to Secure Circulation
1864	508	$ 86.8	$ 45.3	-----
1865	1,513	393.2	171.3	-----
1870	1,615	430.4	291.8	$340.9
1875	2,088	504.8	318.4	370.3
1880	2,090	457.6	317.4	357.8
1885	2,714	527.5	268.9	307.7
1890	3,540	650.4	122.9	140.0
1895	3,712	657.1	182.5	208.7
1900	3,871	630.3	288.9	294.9
1905	5,757	779.9	469.9	476.6
1910	7,173	1,002.7	674.8	685.6
1911	7,301	1,025.4	697.0	707.2
1912	7,397	1,046.0	713.8	724.1

Circulation.—The significant characteristic of the national banking system is the basing of circulation upon Government bonds held in pledge. Note issue is thus inelastic and not responsive to commercial needs. When business is brisk, demanding a large volume of notes for its transactions, the price of bonds is likely to be high, thus defeating the desire of banks to accommodate borrowers. The volume of note issue is in direct relationship to the volume and price of bonds available for purchase; in other words, it is dependent upon the amount of government indebtedness and the rate of interest which such securities bear.

Beginning with 1882 there was a succession of Treasury surpluses which were devoted in large part to the purchase of bonds. Holders of these securities took advantage of this demand; the price rose until the premium was so great that not only was there little profit in the investment of bonds for the organization of a new bank, but the banks already established found it more profitable to sell securities and retire notes. The volume of national bank circulation consequently declined from $320,000,000 in 1881 to $123,000,000 in 1890.

The bond issues of 1894–96 increased the supply, and this led to some expansion in circulation, aided by the lower price of government securities occasioned by the decline in government credit incident to the monetary embarrassment as the result of increased silver coinage after 1890. More marked relief came in 1900 when note issue was permitted on the par value of bonds. The tax on circulation was reduced from one to half of one per cent; and government indebtedness was refunded on a two per cent basis, which naturally led to lower prices of bonds. These factors, together with the opportunity to establish banks with a minimum capital of $25,000, led to a rapid expansion of the system. Many state banks were converted into national associations and hundreds of small banks were organized in small towns. Between 1900 and 1910 there were 652 conversions of state banks into national associations and 2,564 new organizations formed. The total number of banks doubled during this decade.

Question of Double Profit.—For many years there was much popular opposition to national banks in those sections where greenbackism obtained strong support. Not only were the banks held to be representatives of a money power centralized in Wall Street, but objection was made to the supposed double advantage which the banks enjoyed. They received interest on the bonds which they deposited and also interest on the loans of currency based on those bonds. When bonds bore a high rate of interest and could be purchased at but a slight premium there was some reason for this complaint; but it neglected to take into account such factors as taxation (*see* BANK TAXES); the rise or decline in the price of bonds; the loss of premium if bonds were held to maturity; and the miscellaneous expenses charged for engraving and delivering the notes. As bonds now carry but two per cent interest, the objection of double profit has lost its weight. Moreover there is a clearer appreciation of the useful function of banks in all parts of the country.

Reserve System.—Many embarrassments have occurred because the reserve is fixed by law proportionate to deposits, thus giving a bank in time of emergency no leeway to meet sudden and urgent calls for loans. As country banks can deposit the major portion (three-fifths) of the required reserve in a reserve city bank, and reserve city banks can in turn deposit one-half of their reserve in a central reserve city bank (New York Chicago, and St. Louis), deposits are piled up in New York City banks where there is an active demand for call money by brokerage houses. As New York banks holding reserves pay interest on such deposits this movement is to the advantage of the country banks, which can thus earn something on what would otherwise be unproductive. The evils attending this practice are especially marked in a crisis when the latter institutions find it impossible to secure promptly their funds centralized in New York.

Federal Control.—Federal control of national banks is exercised by the Comptroller of the Currency assisted by a staff of examiners (*see* BANKS, EXAMINATION OF). Beside the personal examination made by examiners, each bank is required to make five reports of condition annually, the dates being selected arbitrarily by the comptroller. From the establishment of the system to October 31, 1912, 525 banks failed. On an average their creditors received 83 per cent of their claims, though stockholders frequently lost heavily.

See BANK, CENTRAL; BANK DEPOSITS, GUARANTEE OF; BANK OF THE UNITED STATES, FIRST; BANK OF THE UNITED STATES, SECOND; BANKS, EXAMINATION OF; COMPTROLLER OF THE CURRENCY; CURRENCY, REDEMPTION OF; FINANCIAL STATISTICS; HAMILTON, ALEXANDER; PAPER MONEY IN THE UNITED STATES; and under BANKING.

References: Monetary Commission of the Indianapolis Convention, *Report* (1898), 197–230 (history), 247–259 (failures); O. M. W. Sprague, *Hist. of Crises under the Nat. Bank System* (1910); A. M. Davis, *Origin of the Nat. Banking System* (1910); Comptroller of the Currency, *Annual Reports;* W. W. Swanson, *Establishment of the Nat. Banking System* (1910); H. White, *Money and Banking* (4th ed., 1911), 348–360, 401–410; F. W. Taussig, *Principles of Economics* (1911), I, 375–382; D. R. Dewey, *Financial Hist. of the U. S.* (1903), 298, 383, 435, 463, (bibliographies); F. T. Haskins, *Am. Gov.* (1912), 37, 38; *Am. Year Book 1910,* 333, 340; *1911,* 302, 303 and year by year. DAVIS R. DEWEY.

BANKS AND BANKING, STATE. History.—At the time of the adoption of the Constitution, 1789, there were but three state banks, located in Philadelphia, New York and Boston. In 1800 there were 28; but after the liquidation of the first United States Bank in 1811, the number rapidly increased amounting to 246 in 1816. In 1840 there were 901, and in 1860, 1,562. With the establishment of the national banking system (1863) the number declined; in 1880 there were 811. Beginning with 1887 the number again rapidly increased, due to the high price of United States bonds requisite under a federal char-

ter. In 1890 there were 2,534; in 1900, 4,405; and in 1910, 12,166. This more recent development has been due, in part, to the regulation of private banking which has driven individuals and partnerships to incorporate under a regular banking law. The distribution by sections of the country in 1912 was as follows:

New England	21
Eastern states	431
Southern states	4,043
Middle Western states	4,344
Western states	3,546
Pacific states	965
Island possessions	31
Total	13,381

Although the number of state banks is greater than that of national banks (7,397) their capital is less than one half, $459,000,000, as compared with $1,046,000,000.

General System to 1861.—In the earlier period of banking, before the Civil War, there was great diversity in the charters and in the systems worked out in different states. At first each bank was founded under a special charter, so that the powers and obligations of institutions in the same state varied. Frequently, the grant of a charter was accompanied by corruption or deceit; the banks misused their privileges and by reckless operations were responsible for currency embarrassments. Particularly lax were the regulations regarding the paying-in of capital, the issue of notes and their redemption, the carrying of a reserve, and the supervision of banks by any adequate governmental authority.

Gradually, certain well-defined systems were evolved. Redemption of notes was made more effective in New England through the so-called Suffolk system put in operation in 1819. In 1829, New York established the safety-fund system for the protection of depositors; and in 1837, in order to eliminate corruption incident to grants of special charters and to place note issues upon a sounder basis, enacted a free banking law under which any group of persons by depositing certain approved collateral could take out a charter and issue circulation. This system was copied in fifteen other states. Louisiana in 1846 contributed a notable reform in requiring a more ample specie reserve against deposits and circulation. In the South and West, however, many of the states engaged in banking, based their credit on public lands and property which had unstable value. As a rule these experiments were disastrous.

Juxtaposition with National Banks.—Notwithstanding a gradual improvement in banking practice, the proposal by Secretary Chase in 1861 that a national system of banking be established in order to eliminate existing evils, met with general approval. With the passage of the law in 1865 imposing a federal tax of ten per cent upon all state bank issues, state banking was relegated to a subordinate position. The stricter supervision over national banks demanded by the federal act also inspired depositors to place greater confidence in these institutions.

Modern System.—During the past thirty years, as the privilege of note issue has become of relatively less importance for successful banking operations, the number of state institutions has greatly increased. An important factor in this growth has been the small amount of capital required under state laws. Under the national banking law, the minimum capital is $25,000; while in nearly every state in the West and South state banks may be established with a capital as low as $10,000. The requirements as to payment of capital are as a rule less stringent than those of the national bank law, but in this as well as in the regulation of surplus and liability of stockholders, state laws are gradually conforming to the standard set by the federal system. The restrictions on discounts and loans to any one person or corporation, however, are on the whole less severe in the state laws than under the national banking act.

On the other hand, some states require their banks to segregate their savings deposits and sharply restrict their investments to certain securities, while the federal laws make no such restriction. Of more consequence in determining the choice of state incorporation is the privilege granted by all states, except Rhode Island, of loaning on real estate. This privilege, though attended with danger in locking up funds in inconvertible assets, is regarded as highly essential to banks established in small rural communities and in the more newly settled sections of the country where land values contribute a large proportion of the wealth of the shareholder.

State laws vary greatly as to the amount of reserve required to be held by banks; some demand a reserve against all classes of deposits; others a reserve only against demand deposits; and still others, different amounts of reserve against different classes of deposits. In all states balances in other banks may be considered as part of the reserve, and only in a few states are reserve agents specified. In three states the reserve may consist in part of securities. Although ten states permit banks to establish branches, this feature has been but little developed.

Owing to lack of complete data, it is not possible to state accurately how successful state banks have been in their operations; but according to calculations made by Barnett, the annual percentage of failures in recent years has been very nearly the same as that of national banks—for state banks 27 hundredths of one per cent or one in 370, for national banks 21 hundredths of one per cent or one in 476.

See BANKING, BRANCH; BANKING, PUBLIC REGULATION OF; BANK OF NORTH AMERICA; BANKS, PRIVATE; BANKS, EXAMINATION OF; FINANCIAL STATISTICS; SAFE DEPOSIT COMPANIES; TRUST COMPANIES.

References: G. E. Barnett, *State Banks and Trust Companies since the Passage of the National Bank Act*, D. R. Dewey, *State Banking before the Civil War*, both issued by Nat. Monetary Com. (1910); Pierre Jay, "Recent and Prospective State Banking Legislation" in *Quart. Journ. Econ.*, XXIII (1909), 233–250; W. G. Sumner, *Hist. of Banking in the U. S.* (1896); H. White, *Money and Banking*, (4th ed., 1911), 244–253, 291–397; W. M. Gouge, *Short Hist. of Paper Money and Banking in the U. S.* (1833). DAVIS R. DEWEY.

BANKS, COÖPERATIVE LOAN. Banks organized and democratically managed by small industrialists or agriculturalists in which funds are drawn from loans and deposits by members or others—largely from the small savings of members—and funds are advanced to members in the discounting of bills, also in cash, or its equivalent, (1) against mortgage or collateral security, and (2) especially against the personal credit of the borrower on the personal indorsement of other members. There are two main types: *viz.*, "town banks" after the Schulze-Delitzsch model, and "country" or agricultural banks after the Raffeisen model. See BANKS, SAVINGS; BANKS, AND BANKING, STATE; BUILDING ASSOCIATIONS. References: C. R. Fay, *Coöperation at Home and Abroad* (1908), Part I; H. W. Wolff, *People's Banks* (3d ed., 1910). E. H. V.

BANKS, EXAMINATION OF. National banks are subject to examination under the jurisdiction of the Comptroller of the Currency; and in many states, state banks are examined by officials in the department of the state superintendent or supervisor of banking. For national banks there are approximately ninety examiners. Each bank must be examined semi-annually. No notice is given and the bank for the time being is in the control of the examiner. It is his duty to scrutinize the books, verify the cash, examine the securities and investments. The law places no limitation upon his inquisitorial powers, but in practice his service is limited, and imprudent or dishonest operations may be carried on by bank officials without detection. Repeated visits of the examiner, however, tend to familiarize the examiner with the character of a bank's business, so that he is often able to render reports which enable the comptroller to advise as to improvement of methods. Frequently, when a bank fails, the examiner is blamed for not previously discovering the mismanagement. But no examiner can pass judgment on the quality of all loans. In recent years there has been an improvement in the service. See under BANKING, BANKS. References: *Am. Year Book, 1910*, 333–334, and year by year; U. S. Comptroller of the Currency, *Annual Reports*.

D. R. D.

BANKS, NATHANIEL PRENTISS. Nathaniel Prentiss Banks (1816–1894) was born at Waltham, Mass., January 30, 1816. In 1849 he was elected to the Massachusetts house as a Free Soiler, and in 1851–52 was speaker. He presided over the state constitutional convention of 1853, and in the same year was elected to Congress by a fusion of Democrats and Know-Nothings. With the passage of the Kansas-Nebraska bill he became an "Anti-Nebraska man," and as such was chosen Speaker in February, 1856, by a plurality, after 130 ballots. He presently identified himself with the Republicans, and from 1857 to 1859 was governor of Massachusetts. On the outbreak of the Civil War in 1861 he was commissioned major-general of volunteers, and served until the close of the war. He was again a member of the House of Representatives from 1865 to 1873, 1875 to 1877, and 1889 to 1891; during his last term being chairman of the committee on foreign affairs. In 1872 he joined the Democrats, but resumed his Republican allegiance in 1876. From 1879 to 1888 he held the office of United States marshal for Massachusetts. He died at Waltham, September 1, 1894. See SPEAKER OF THE HOUSE OF REPRESENTATIVES. References: J. F. Rhodes, *Hist. of U. S.* (1893–1905), *passim;* W. Schouler, *Hist. of Mass. in the Civil War* (1868–71); M. P. Follett, *Speaker of the House of Representatives* (1896).

W. MACD.

BANKS, PRIVATE. There are two classes of private bankers in the United States; those in small towns where there is not sufficient business to justify strong chartered institutions; and those in large cities, particularly in the East, which in the magnitude of their business frequently surpass incorporated banks, as J. P. Morgan and Co., August Belmont and Co., Kuhn, Loeb and Co., of New York, Kidder, Peabody and Co. and Lee, Higginson and Co. of Boston. As a rule these bankers have foreign agencies or are attached to a management which has branches in many parts of the world.

They occupy in the United States the position held by the famous Rothschilds in Europe. Unhampered by restrictions imposed in charters, they are free to engage in a great variety not only of strictly banking but of fiscal operations. They are not so apt to engage in the ordinary business of discounting mercantile paper or of carrying deposit accounts to be drawn upon by check, as are chartered banks; but rather devote themselves to loans on collateral, to dealings in foreign

exchange, to acting as fiscal agents, to underwriting securities for larger corporations, and to aiding insolvent corporations to effect reorganization.

Particularly intimate are their relations with corporate finance, and they give to such firms a dominant position in the financial world. J. P. Morgan and Company, for example, undertook the financial organization of the United States Steel Corporation. The private banking firm of Jay Cooke and Co. helped to place hundred of millions of United States bonds during the Civil War; and the syndicate headed by Belmont provided gold to the Treasury under a bond sale of the Cleveland administration in 1895. Because of their foreign agencies certain private bankers in New York have almost a monopoly in the foreign exchange business.

Private banks of the less important financial type are scattered throughout the West, it being estimated that there are in all over 3,000. Only about one-third make returns to the Comptroller of the Currency, so that statistical data as to their operations are incomplete. In a few states, legislation has recently been enacted forbidding any firm or individual to use the term bank as a title of business without incorporating under state law so as to bring all banking institutions under state supervision. Private banks are carried on by some foreigners, especially Italians in the principal cities, acting also as steamer agents; failures and irregularities caused the New York legislature in 1911 to place them under speeial state supervision.

See Banks and Banking, State; Banking Methods.

References: A. K. Fiske, *The Modern Bank* (1905), 223–227; S. S. Pratt, *The Work of Wall Street* (1912), 340–348; U. S. Comptroller of Currency, *Annual Reports* for statistics.

Davis R. Dewey.

BANKS, SAVINGS. Mutual and Stock.—Savings banks are institutions for the deposits and investment of small earnings. They have two objects; the encouragement of thrift and the accumulation of wealth which would otherwise be hoarded or diverted into unproductive consumption. They were first established in England at the beginning of the nineteenth century, and thence the principle was introduced into Massachusetts in 1816. In this original form saving banks are mutual institutions, run solely for the benefit of the depositors. As there are no stockholders, all earnings, save what are necessary for running expenses are distributed, in the form of increased interest, to the depositors. This type has been developed more particularly in New England and the eastern states, as far south as Maryland. There are also a few mutual savings banks in six other states. Another class of institutions is the stock savings bank, to be found in nearly every state. These banks frequently engage in commercial banking (*see* Banking Methods). While they serve a useful purpose, they are not so likely to be managed in the sole interest of depositors.

Statistics.—The two classes were compared as follows in the year 1912:

	Mutual	Stock
Number of Banks	630	1,292
Number of Depositors	7,851,377	[1] 2,158,927
Deposits	$3,608,657,828	$842,897,859

[1] Of the stock depositors, 1,746,415 are savings depositors, and 412,512 have commercial accounts.

New York had the largest number of depositors, approximately three-tenths (3,024,746), and Massachusetts followed with a little more than two-tenths (2,179,973). It must not, however, be inferred that the number of deposit accounts represents the number of people depositing, for a single individual may have more than one account.

In mutual savings banks there is generally a limit placed upon the amount of deposits by an individual depositor, upon which interest will be paid. In Massachusetts, for example, original deposits up to $1,200 will be accepted, and interest will be allowed to accumulate up to $2,000, above which no interest will be allowed.

Investments by savings banks are largely made in loans on real estate mortgages; for example, 47 per cent of the deposits of mutual banks were so loaned in 1912. Nearly all the rest of the deposits is invested in bonds. As investment is a primary object, it is not necessary for a savings bank to keep on hand any large sum of cash; the money actually in hand in 1911 amounted to less than half of one per cent of the total deposits.

Government Regulation.—There is a large body of statute law on saving banks. They are commonly not allowed to discount commercial paper. The laws of many states are very strict in regulating investments; they even limit bond purchases to the securities of certain states, cities, or railroads. Banks are authorized to postpone payment of deposits for a period—commonly sixty days—in case of a run or commercial crisis. In some states banks are required to publish lists of long inactive accounts and unclaimed balances eventually must be turned over to the state. The federal postal savings banks (*see*) are likely to be serious competitors. The average rate of interest paid on deposits by mutual savings banks in 1911 was 3.95 per cent.

See Financial Statistics and under Banks, Banking.

References: M. L. Muhleman, *Montetary and Banking Systems* (1908), 81–82; A. K. Fiske, *Modern Bank* (1905), 244–254; U. S. Comptroller of the Currency, *Annual Report,* statistical summaries and tables.

Davis R. Dewey.

BANKS, WILD-CAT. This term was applied to certain banks established in western states during the period 1838–1860. A few of the states in that section enacted free banking laws in imitation of the New York act of 1838, whereby banks could be easily organized, with generous privileges as to issue of circulating notes. Michigan was preëminent in permitting banks to be organized with but little capital, irresponsible management, and no adequate supervision. Some of the banks were located in remote and inaccessible places, with no other intent than to defraud the public through the issue of large amounts of bills which were not redeemed. These notes frequently bore emblems of frontier life, among which was the wild-cat, which was seized upon as synonymous with worthless bank note issues. See PAPER MONEY IN THE U. S. **References:** J. B. McMaster, *History of the People of the U. S.*, V (1900), 160–162, VI (1906), 405–408; A. Felch, "Early Banks and Banking in Michigan," in *Sen. Ex. Doc.*, No. 38, 52 Cong., 2 Sess. (1893).

BARBARY POWERS, DIPLOMATIC RELATIONS WITH

Corsair States.—The relations with the four Mohammedan states on the southern shore of the Mediterranean constitute a curious chapter in the history of American diplomacy. In common with other countries the United States for many years virtually paid tribute to them, or failing to do so, suffered the loss of commercial vessels and the enslavement of seamen. To understand the reason for this, two facts should be borne in mind: first, according to the teaching of their religion every Moslem power is normally at war with every non-Moslem power in the absence of a specific agreement to the contrary; second, these four states, together with Turkey, to which power the others acknowledged a shadowy subjection, considered the Mediterranean their private property which others could use only by their permission to be obtained by paying for the privilege—a sort of rental, not unlike the Belt Dues (*see* DANISH SOUND DUES) in the Baltic. To their minds the seizures were privateering, and the seamen detained were prisoners of war; to the Christian powers their acts were piracy.

Negotiations before 1789.—Before the American Revolution the flag of England protected the Mediterranean commerce of her American colonies. In the treaty of 1778 with France the United States endeavored to introduce an article securing the protection of that country. This failed but the French King agreed to assist by his good offices. These were asked in 1785 by Adams, Franklin and Jefferson who had been authorized by act of Congress of the preceding year to treat with the Barbary States. The Tripoline ambassador in London, speaking also for Tunis, had approached Adams declaring that his humanitarian instincts led him to seek peace. His communications read more like *opéra bouffe* than diplomacy. Jefferson, from Paris, was induced to join Adams in London. The presents demanded in return for peace were so exorbitant that negotiations were suspended. Jefferson wished to go to war; Adams thought it better and cheaper to buy peace as other nations did.

Morocco was the first of these powers to make peace, concluding a treaty in 1786 through Thomas Barclay, who was subdelegated to conduct the negotiations. It provided for neither tribute nor presents; but a payment of little less than $10,000 was made on its conclusion. The Emperor with whom it was concluded having died, $20,000 additional was sent in 1795 to induce the new Emperor to recognize the treaty.

Negotiations After 1789.—It was nearly a decade after the Moroccan treaty before one was concluded with Algiers. John Lamb had been sent there when Barclay went to Morocco but accomplished nothing because of his incompetence and the extravagant demands, (about $60,000) for the ransom of seamen. To secure their release Jefferson, in Paris, engaged the services of the Mathurians or Society of the Holy Trinity for the Redemption of Captives; but the French Revolution put an end to their services by terminating the existence of the order. In 1792, on the initiative of President Washington, the Senate recommended paying $40,000 to Algiers in ransom, and $25,000 annually. Before negotiations were begun Portugal, in 1793, concluded a truce with Algiers which allowed to the piratical fleet exit into the Atlantic. Numerous captures followed, increasing the number of captives and the cost of ransom. When, in 1795, the treaty was finally concluded it cost more than $900,000. It was the only treaty with the Barbary States which stipulated the payment of tribute. The annuity in naval stores was valued at a little more than $21,000, besides presents on various occasions. Tripoli made a similar treaty in 1796 except that the original payment of about $56,000 was accepted in lieu of all obligations and no tribute or further payment was to be made. In 1797 Tunis accepted $107,000, for a treaty. Although these two treaties did not provide for tribute the numerous presents and payments amounted to almost the same.

Naval War.—By 1802 more than $2,000,000 had actually been paid to these powers. For

much less than this a fleet could have been created which would have secured peace and the release of captives and guaranteed security for the future. Many, including Jefferson, wished to try this method. Others feared the creation of a navy, thinking it too powerful a weapon in the hand of the central Government and likely to involve foreign complications. In spite of this opposition the Algerine negotiations were the occasion for the beginning of an active navy. In the absence of force the treaties proved a protection only so long as the piratical states wished to observe them.

A breach of the Moroccan treaty in 1803 occasioned a hostile demonstration by the United States which restored peace. The Bashaw of Tripoli grew restless because the presents were not as frequent or substantial as he wished. This led to the Tripoline War which, after numerous engagements, ended in the peace of 1805. During the war of 1812 with Great Britain Algiers opened hostilities. In 1815 a naval force under Decatur was sent and after a demonstration and a refusal to allow delay for consideration of the terms submitted by the American officer peace was concluded. No presents were given and tribute of any kind in the future was abolished, and prisoners were no more to be made slaves. Decatur afterward visited Tunis and Tripoli and collected indemnity for seizures made in violation of treaties. This ended a disgraceful chapter in American history. Even after tribute ceased, however, appropriations were made annually of several thousand dollars for presents, continuing until the middle of the century.

Later Questions of Sovereignty.—Turkey made many attempts to induce the United States to recognize her sovereignty over these states especially Tripoli. Between 1873 and 1876 considerable correspondence passed on the subject. But Secretary Fish declared that the United States had never formally acknowledged nor denied such sovereignty. Algiers became a French province about 1830 and has subsequently been dealt with through that power. In 1881 Tunis became a French protectorate. In 1904, after nearly a decade of negotiation, by a treaty with Franee the United States renounced the treaties with Tunis and agreed to protection through France. The first Moroccan treaty, which was to endure fifty years, was renewed at the end of that time. A convention for maintaining a light-house on Cape Spartel was concluded in 1865. And in 1888 a convention was concluded for adjusting claims of United States citizens against Morocco.

In 1906 the United States took part in the Conference of Algeciras on the future of Morocco, and thereby made itself a party to the European deliberation on the future of the only North African power then remaining independent.

See AFRICA, DIPLOMATIC RELATIONS WITH; PIRACY; WARS OF THE UNITED STATES.

References: G. W. Allen, *Our Navy and the Barbary Corsairs* (1905), critical bibliography and digest of treaties; Eugene Schuyler, *Am. Diplomacy* (1886), 193–232; J. B. Moore, *Digest of Int. Law* (1906), V, 391–402, (and see index); Eugene Dupuy, *Americains et Barbaresques* (1910). WM. R. MANNING.

BARBARY WARS. See WARS OF THE UNITED STATES.

BAR'L. A term indicating a barrel of money available for political campaign purposes. The St. Louis *Globe Democrat* is credited with having given the word its political currency in the spring of 1876 by alluding to Samuel J. Tilden (*see*) as a prospective presidential candidate with an "available bar'l."

O. C. H.

BARNBURNERS. The Barnburners constituted a faction of the New York Democrats, made up of radical reformers, who would "burn the barn to get rid of the rats." When Van Buren failed to receive the nomination for President in 1844, this faction did not support Polk as did the Hunkers (*see*). The Barnburners were represented in the Free Soil convention, and advocated the principle of the Wilmot Proviso. In 1848, the Barnburners nominated Van Buren for President. He was later nominated by the Free Soil party. The Barnburners accepted the Compromise of 1850, and the Democracy for a time was united. **See** DEMOCRATIC PARTY; FREE SOIL PARTY. **References:** G. P. Garrison, *Westward Extension* (1907), 271–282; J. A. Woodburn, *Pol. Parties and Party Problems* (1909), 69; E. Stanwood, *Hist. of the Presidency* (1898), 238–243.

T. N. H.

BATHS, PUBLIC. Public baths have been maintained in Europe for many years; in the United States only very recently. Overcrowding in cities and meagre bathing facilities in tenements make the municipal bath practically a necessity as a health measure. Public baths may be classified as: (1) the beach bath; (2) floating bath; (3) the pool; (4) the shower bath; (5) combined shower and pool. Baths for recreational purposes were the first, while those solely for hygienic purposes, combining both features, came later in America. In 1866 Boston had both a beach bath and the floating bath; New York, the floating type in 1870, and Philadelphia, the first pool bath (1865). Other cities provided summer baths. In the nineties began municipal shower baths with hot and cold water, open the year round.

Slow progress was made because of the prevailing opinion that city houses usually contained bathrooms and the public need for bathing facilities was not as great as in other countries, an opinion gradually changed by accurate statistical investigation. New York

in 1895 required all cities having a population of more than 50,000 to establish and maintain free public baths; and allowed any place of less than 50,000 inhabitants to do the same. Such baths must be kept open fourteen hours daily and furnish both hot and cold water.

Massachusetts permits localities to use their discretion in providing public baths. In some states without a special law municipalities have taken the initiative; thus Milwaukee established the West Side Natatorium (1890) and Chicago, the Carter H. Harrison Bath (1894). There are some state baths such as the one at Revere Beach near Boston, the cost of maintenance being allotted among the several municipalities composing the district.

A small fee is charged in some places for use of baths, towels and soap to encourage a feeling of self-respect among patrons. The cost of maintenance varies. In the Philadelphia municipal bath pools, the cost per bath is approximately one quarter of a cent. In the indoor shower baths of the larger cities it ranges between three and four cents.

Baths maintained by private philanthropic associations often supplement municipal bath systems. Public schools provide shower baths in many cities, with soap and towels furnished free to the pupils. Provision is made in some bathing establishments for laundry departments where women may take soiled clothes and do their washing and ironing, with modern appliances.

See Health, Public, Regulation of; Water Supply.

References: U. S. Department of Labor, *Bulletin* No. 54, (Sept. 1904); W. I. Cole, *Free Municipal Baths in Boston* (issued by Department of Baths, 1890); Mayor's Committee, New York City *Report on Public Baths and Public Comfort Stations,* (1897).

F. D. Watson.

BAYARD, THOMAS FRANCIS. Thomas Francis Bayard (1828–1898) was born at Wilmington, Del., October 29, 1828. After some commercial experience in New York and Philadelphia, he was admitted to the Delaware bar in 1851, and in 1853 was appointed United States district attorney. From 1854 to 1856 he practised law in Philadelphia. An opponent of secession, he was also opposed to war, and in 1861 made a notable speech in favor of peace. In 1869 he succeeded his father, James A. Bayard, as United States Senator from Delaware, and was reëlected in 1875 and 1881. In 1877 he was a member of the electoral commission (*see*), as such acting with the minority. In 1880 and 1884 he was a Democratic candidate for the presidential nomination. In Cleveland's first administration, 1885–1889, he was Secretary of State. On the reëlection of Cleveland, in 1893, he was appointed ambassador to Great Britain. Some remarks in addresses at Edinburgh and elsewhere, construed by the Republicans as an attack on the policy of protection, led in 1895 to an abortive attempt to impeach him. He died at Dedham, Mass., September 28, 1898. See Great Britain, Diplomatic Relations with; State Department. References: E. Spencer, *Life and Public Services of Thomas F. Bayard* (1880).

W. MacD.

BAYS AND GULFS. See Arbitrations, American; Headlands; Water Boundaries.

BEAR FLAG REPUBLIC. A republic declared June 1846, at Sonoma, California by a band of American insurgents led by William B. Ide, who, June 14, captured the Mexican *comandante* there, and raised, as a banner of independence, the bear flag. June 25, John C. Frémont (*see*) took charge of the movement and substituted the Stars and Stripes for the bear flag.

O. C. H.

BEGGARS. The persistence of begging during the Middle Ages was due largely to the attitude of the church in enjoining alms-giving as a virtue. In 1349, England took the first steps to forbid begging, followed the next year by France, and before the close of the century, by some other states. By 1500 it was generally held that all able-bodied persons should be required to work and a state policy of suppression grew up.

In modern times the state definitely prohibits begging, though in America the laws have been almost a dead letter. In certain cities energetic steps have been taken for the suppression of mendicancy, though such a course is only a transference or intensification of the problem elsewhere. A paper on vagrancy in the United States presented at the National Conference of Charities and Correction in 1907 recommended the employment of a special mendicancy officer, detailed to a competent charitable society. An energetic repression is hardly possible without wayfarers' lodges maintained by philanthropic agencies, or municipal lodging houses. Large cities usually provide relief for the homeless and there need be no toleration of the street beggar. Abroad, the courts make a careful distinction between begging in localities where poor relief is obtainable and in places where it cannot readily be obtained.

References: W. H. Davies, *Beggars* (1909); A. W. Solenberger, *One Thousand Homeless Men* (1911); National Assoc. for the Prevention of Mendicancy and Charitable Imposture, *Reports.*

F. D. Watson.

BELLIGERENCY. Belligerency, a state of armed and legally recognized hostility, may exist between states; between a state and a community outside the family of nations; or between an established state and a community within its territorial area which is attempting

to throw off the jurisdiction of the parent state, to change its character, or to attain some other political end.

When two states engage in armed hostility belligerency exists. The mere existence of belligerency changes the legal relations of the two states and the laws of war take the place of the laws of peace in their relations to one another, and the laws of neutrality become operative as regards states taking no part in the hostilities.

If the belligerency of a community outside the family of nations is recognized, it gives to that community so far as the rights of war are concerned an international status as regards the state granting the recognition.

If the belligerency of a community within the territorial area of an established state is recognized by the established state, the state of belligerency exists for all states. If the established state does not recognize the belligerency and another state does, then for the state making such recognition belligerency exists and other states must take cognizance of this status as existing between the recognized and recognizing parties.

The recognition of the belligerency of a party not a state gives to that party all the rights of war of an established state.

The recognition of the belligerency of a revolting community if premature may be regarded by the parent state as a cause for war.

The most common method of recognition by an outside state is by a proclamation of neutrality stating the attitude which the recognizing state proposes to maintain toward the belligerents.

Recognition of a revolting community by the parent state may be by a formal declaration or by an act of less formal character, as was the case of the recognition of belligerency of the southern states in 1861.

See Blockade; Good Offices; Insurgency in International Law; Neutrality, Principles of; Recognition of New States; War, International Relations.

References: H. W. Halleck, *Int. Law* (1908), I, 90, 579; L. Oppenheim, *Int. Law* (1912), I, 90 *et seq.*; J. Westlake, *Int. Law* (1907), II, 60 *et seq.* George G. Wilson.

BELLIGERENCY OF THE CONFEDERATE STATES OF AMERICA. Some have contended that the British proclamation of neutrality of May 14, 1861, was a premature recognition of the Confederate States. International law, however, justifies recognition of a revolting community when a state's "rights and interests are so far affected as to require a definition of its own relations to the parties" (Wheaton, International Law, Dana's Edition, 34, note 15), or when the parent state has taken such action as brings into operation the laws of war in such manner as to affect outside states. On April 19, 1861, President Lincoln issued a proclamation of blockade of the southern ports "in pursuance of the laws of the United States and of the law of nations in such case provided," and as to any vessel attempting to violate such blockade it was provided that "she will be captured and sent to the nearest convenient port, for such proceedings against her and her cargo as prize as may be deemed advisable." As blockade and as prize courts can exist only in time of war, it is a reasonable inference that war existed on April 19, 1861, and Great Britain was justified in issuing a neutrality proclamation for the benefit of all concerned. See Belligerency; Civil War, Influence of, on American Government; Confederate States of America; Great Britain, Diplomatic Relations with; Recognition of New States. **References:** J. J. Callahan, *Diplomatic Hist. of the Southern Confederacy* (1901), chs. i–v; F. Bancroft, *W. H. Seward* (1900), chs. xxx–xxxviii; J. B. Moore, *Digest of Int. Law* (1906), I, 186, *et seq.* G. G. W.

BELT DUES. See Danish Sound Dues.

BENJAMIN, JUDAH PHILIP. Judah Philip Benjamin was born in the West Indies, in 1811 and died in Paris 1884. His early years were spent in Wilmington, N. C., and he was for a time a student at Yale, but he settled in New Orleans and was admitted to the bar there in 1832. Elected to the United States Senate in 1852, he became a staunch supporter of the Pierce administration and an ardent southern expansionist. Though he had been only a moderate secessionist, in 1861 he was appointed Attorney General in the Confederate cabinet. He succeeded to the position of Secretary of War and finally to that of Secretary of State, and was the ablest and most trusted adviser of the Davis government. From 1863 to the close of the war, he urged upon the government the emancipation of the slaves as a bid for European recognition; President Davis finally yielded and the policy was adopted, though to little effect, early in 1865. On the overthrow of the Confederacy, Benjamin escaped to England where he began afresh the study of law, taking his place with the young "benchers" at Lincoln's Inn in January, 1866. He published a valuable work on the "Law of Sale of Personal Property" in 1868 which won for him a reputation in his adopted country, and he came rapidly into a lucrative practice. He was made Queen's counsel in 1872 and for a number of years he was regarded as the foremost lawyer in England. See Confederate States of America. **Reference:** P. Butler, *Life of Judah P. Benjamin* (1907). W. E. D.

BENNETT SCHOOL LAW. The Bennett Law was an act passed by the legislature of Wisconsin in 1889, "concerning the education and employment of children." It provided for compulsory attendance of children between 7

and 14 in some public or private school, and added a requirement that "no school shall be regarded as a school under this act unless there shall be taught therein as a part of the elementary education of the child, reading, writing, arithmetic, and United States history, in the English language." The last four innocent-looking words struck squarely across the practice of many parochial schools in which instruction was given in a foreign language, and precipitated one of the bitterest political fights in the history of the state. Claiming that the law infringed the rights of conscience guaranteed by the Constitution, Roman Catholics and Lutherans, Germans and Bohemians, Norwegians and Poles, all united under the Democratic banner, after an anti-Bennett-Law convention in Milwaukee, and in the election of 1890 turned a Republican majority of 20,000 into a Democratic majority of 28,000 for governor and elected a legislature pledged to give immediate relief. The repeal of the offensive law was accomplished in a six-line act in 1891. See EDUCATION, COMPULSORY; EDUCATION AS A FUNCTION OF GOVERNMENT. K. C. B.

BENTHAM, JEREMY. See POLITICAL THEORIES OF ENGLISH PUBLICISTS.

BENTON, THOMAS HART. Thomas Hart Benton (1782–1858) was born in Orange County, N. C., March 14, 1782. In 1811 he was admitted to the bar in Tennessee, and in the war of 1812 served under Jackson. In 1815 he removed to St. Louis, and in 1820 was elected United States Senator from Missouri, an office which he held for thirty years. As Senator he worked unceasingly and successfully for the reform of the public land system, and the opening and development of the West. He became a staunch supporter of Jackson, sided with him in the bank controversy, opposed Calhoun and nullification, and in 1837 compelled the Senate to accept the expunging resolution. His advocacy of metallic currency won for him the sobriquet of "Old Bullion". In the Oregon controversy he opposed the Democratic demand for 54° 40′ (*see*); and he had considerable influence with Polk in the Mexican War. In 1850 he was defeated by a coalition of Whigs and Democrats, and retired from the Senate. He subsequently served one term in the House, 1853–55, where he vigorously opposed the Kansas-Nebraska bill. He died at Washington, April 10, 1858. He published *Abridgment of the Debates of Congress* (16 vols. 1857–61). See DEMOCRATIC PARTY; MIDDLE WEST; MISSOURI; SENATE OF THE UNITED STATES; WEST AS A FACTOR IN AMERICAN POLITICS. References: T. H. Benton, *Thirty Years' View* (1854–56); T. Roosevelt, *Thomas Hart Benton* (rev. ed., 1898); W. M. Meigs, *Life of Thomas Hart Benton* (1904); E. H. von Holst, *Const. and Pol. Hist. of the U. S.* (1877–92), *passim.*
W. MACD.

BERING SEA CONTROVERSY (1886–1893). This dispute was precipitated in 1886 by the seizure of Canadian sealing vessels near the Aleutian Islands under claim that the United States acquired from Russia exclusive rights in Bering Sea—especially in regard to seal fishing. The British Government, representing the Canadians, denied exclusive rights outside of three miles from shore. See ALASKA, ANNEXATION OF; ALASKA BOUNDARY CONTROVERSY; SEAL FISHERIES; WATER BOUNDARIES AND JURISDICTION. J. M. C.

BERLIN DECREE (1806). The Berlin decree of November 21, 1806, which formulated the Continental System (*see*), declared the British Isles in a state of blockade, and prohibited all commerce and correspondence with them; it was justified by Napoleon as a retaliatory measure against the Orders in Council, on the ground that Great Britain ignored the principles of international law. For nine months its precise terms were kept from the American Government, which, after protesting without effect, restored to the Embargo Act (*see*). See CONTRABAND; FRANCE, DIPLOMATIC RELATIONS WITH; MARITIME WAR; MILAN DECREE; NEUTRAL TRADE. References: A. T. Mahan, *Influence of Sea Power* (1892), II, ch. xviii; J. B. Moore, *Int. Arbitrations* (1896), V, 4448–44451, 4479, 4493–4494; Francis Wharton, *Digest of Int. Law* (1887), II, 607–608, 610. J. M. CALLAHAN.

BERTILLON SYSTEM OF MEASUREMENT. The Bertillon system of measurements is a system of identification of criminals based upon certain bone measurements, inasmuch as the length of bones does not change after the attainment of adult years. M. Bertillon, a French expert, established a system of measuring the height standing, the height sitting, the length and width of the skull and the length of certain fingers, together with certain measurements of the ear, certain observations of the eye and, for convenience, the front and profile photographs, without which, however, identification can be made. The records of such measurements proved to be an infallible means of identification. They are filed in such a way that, in case a duplicate measurement of a prisoner exists, it may be found in three minutes among 20,000 cards.

The Bertillon system has been used extensively for the identification of criminals in France and in other continental countries. It is in use in a considerable number of American convict prisons and has been extensively used by police authorities of the larger American cities. An identification bureau on the Bertillon plan was established in the United States but was only partly successful because it depended upon voluntary coöperation of prison and police authorities which in many cases was lacking.

See Crime, Statistics of; Criminal Registry.

References: C. A. Mitchell, *Science of the Criminal* (1911); R. W. McClaughry, Ed., *Bertillon System of Identification* (1896); Henry W. Boies, *Science of Penology* (1901).
Hastings H. Hart.

BETTERMENTS, ASSESSMENTS FOR. The term betterment refers to the improvement of property by public improvements. In many cases it is the practice to assess part of the cost upon the abutting landowner who receives the special benefit. See Assessments, Special; Eminent Domain; Public Works, National, State and Municipal; Streets. **Reference:** V. Rosewater, "Special Assessments" in *Col. Stud. Hist., Econ., and Public Law,* II (1898), No. 3. D. R. D.

BICAMERAL SYSTEM. The bicameral, or two chambered, system is the universal form of the state legislature. The upper legislative houses, invariably called senates, differ from the lower houses, frequently called houses of representatives, chiefly in greater length of tenure, in smaller number of members, and in special duties. In Congress and in a few states, the systems of representation for the two houses is different. About one quarter of the large cities have two chambers in the city legislative body. Although the bicameral system was in use in England at the time America was settled, it was developed out of local needs quite as much as through imitation of the English system. Since the powers of the legislature were increased after we became independent of Great Britain, our ancestors, who believed very thoroughly in a government of checks and balances, accepted the bicameral system as the best form of the legislature and adopted upper houses in all of the states. The system has tended to minimize somewhat the great American evil of over-legislation by giving opportunity for second thought on proposed legislation. It has also been the cause of friction and unnecessary delays with divided responsibility for compromised legislation. **References:** J. Bryce, *Am. Commonwealth,* (4th ed., 1910), I, 185–190, 484; P. S. Reinsch, *Am. Legislatures,* (1907), 5, 6, 196–200; W. Wilson, *Congressional Government* (1885), 219–228. R. L. A.

BIG STICK. A term probably first used by President Roosevelt, in advocating the policy of a big navy, in a statement that a nation like a man should "tread softly, but carry a big stick." The term was applied by the press to President Roosevelt's method of coercing congressional acquiescence in his legislative program, and later to his methods used in dominating the policies of his party and influencing the selection of his successor.
O. C. H.

BILL BOARD ADVERTISEMENTS, PUBLIC REGULATION OF. The reason and judicial justification for public regulation of bill board advertisements are: (1) protection of morals; (2) beautifying of the city and country. Regulations have usually taken the form, in continental countries, of censorships, requiring approval before the advertisements can be put up. In the United States, regulations have left the responsibility wholly with the advertiser and the bill poster; and definite steps to prevent abuses have been taken in only a few municipalities, notably St. Louis, Kansas City, and Washington. In continental countries the municipal governments have frequently undertaken both the ownership and the management of bill boards in order that they may regulate fully all advertisements that may appear thereon, both as to the effects on public morals, and as to their aesthetic harmony. In the United States public activity has been thus far largely confined to the issuance of resolutions by civic associations, and by securing public action through letters to the bill poster and the advertiser, and through notices in the local papers, asking advertisers to refrain from using ugly or objectionable posters, and asking consumers to refrain from patronizing objectionable advertisers. See Art Commissions; City Planning; Public Morals, Care for. **References:** National Municipal League, *Proceedings*; *Am. Year Book, 1910,* 237, and year by year. C. L. K.

BILL OF ATTAINDER. See Attainder, Bill of.

BILL OF LADING. A receipt given to the shipper upon the delivery to the carrier of goods for transportation. In the form employed by railroads, this document contains the essential facts concerning the shipment, and a contract between railroad and shipper defining the railroad's liability. The "order bill of lading," under which goods are consigned to the shipper or his order, is negotiable and is extensively used as collateral for loans. Upon the recommendation of the Interstate Commerce Commission, a uniform bill of lading, agreed upon in conference between shippers and carriers, was adopted in 1908 by practically all the railroads. This bill exempts the carrier from liability for certain specified causes in addition to those recognized at common law. It applies in general to merchandise shipments. Special contracts, in which the uniform bill of lading is not employed, are frequently made to cover livestock and other special freight.

An amendment to the Interstate Commerce Act in 1906, known as the Carmack Amendment, provides that the initial carrier shall be liable for loss or damage to freight whether occurring upon its own line or not, such carrier to have right of recovery from the road upon

whose line the loss occurred. This provision was held constitutional by the United States Supreme Court in January, 1911 (Atlantic Coast Line R. R. Co., *vs.* Riverside Mills, 219 *U. S.* 186).

See Freight, Classification of; Rebates.

References: Johnson and Huebner, *Railroad Traffic and Rates* (1911), I, 98–105; L. G. McPherson, *Railroad Freight Rates* (1909), 188–190; *Am. Year Book, 1910*, 343, and year by year. Frank Haigh Dixon.

BILL OF PAINS AND PENALTIES. See Pains and Penalties, Bill of.

BILLS, COURSE OF. In the National House of Representatives there is no check whatever upon the right of an individual member to introduce a bill upon any subject upon any legislative day. Public bills are left on the Speaker's table; private bills in the clerk's bill-box. In the Senate, a member secures recognition and leave to introduce a bill, and one day's notice is necessary, except by unanimous consent; but consent is never refused. All bills are referred to appropriate standing committees immediately on introduction, and printed; upon report by the committee they are placed upon the calendar in order of report. In the Senate, there is a single calendar, and bills generally are taken up for consideration in order. In the House there are three: the Union calendar for money bills, the House calendar for other public bills, and the private calendar; but the order of consideration is determined not by position on the calendar, but by call of the committee which reported it, by unanimous consent, by suspension of the rules, or by the adoption of a special rule reported by the committee on rules. Technically, the traditional requirement of three readings is still maintained, but the committee system has deprived it of significance. In the Senate, first and second readings, by unanimous consent, precede reference to committee; in the House, the bill receives its first reading, by title, and second reading, in full, when it is taken up from the calendar for consideration. No division is ever had at these stages. When consideration upon second reading is completed and amendments have been disposed of, three stages remain which in the absence of objection, are commonly regarded as one, and only one vote taken: *viz.*, the order for engrossment, third reading, and the final passage. Third reading should strictly be of the engrossed bill, but unless the question is raised, it is by title only, and engrossment (now by printing) follows final passage. The engrossed bill, attested by the clerk or secretary, is sent to the other house, where its course is substantially that of a bill originating there. Upon passage without amendment by the second house, it is returned to the first for enrollment (by printing on parchment), and, upon report by the committee on enrolled bills that it is truly enrolled, it is signed, first by the Speaker, second by the president of the Senate, and presented by the committee on enrolled bills to the President. If the second house proposes amendments, the bill is returned to the first, where the question is usually put: either, upon agreeing to the amendments whereupon the bill passes to enrollment; or upon rejecting and asking a conference. In the latter case, the second house either recedes from its amendments, or insists and agrees to a conference. The report of the conference committee is made simultaneously to the two houses, and if it is adopted by both, the bill is enrolled, as above. Bills signed by the President are filed in the State Department, notification of signature being sent by message to the house in which the bill originated and noted in the journal.

In the states, the rules of the legislatures follow in their main features those of Congress; but the minor variations are very many, while variations in practice are innumerable Only some of the requirements found in the constitutions can be noted here. Several states (Arkansas, California, Colorado, Maryland, Mississippi and Washington) forbid the introduction of bills after a certain period from the beginning or within a certain number of days of the end of a session; and two forbid the passage of bills on the last day or two (Indiana and Minnesota). In about a dozen, the committee system is fixed in the constitution by a requirement that no bill shall be considered for passage unless it has been referred to and reported from a committee. More than half of the states embody the requirement of three readings in the fundamental law, usually readings in full on separate days, although, in some, unanimous consent or a special message from the governor may relax the requirement; and it is to be noted that if precise observance of the rules be not insisted on in the legislature itself, there is commonly no external power of enforcement.

See Amendment of Legislative Measures; Bills, Private; Calendar; Closure; Committee System in U. S.; Concurrent Resolutions; Conference Committee; Deadlocks in Legislation; Debates in Legislatures; Divisions; Joint Resolution; Legislative Output; Legislature and Legislative Reform; Order of Business; Reports of Committee; Rules; Voting in Legislative Bodies.

References: A. C. Hinds, *Rules of the House of Representatives* (1909), index title Bills; P. S. Reinsch, *Am. Legislatures and Legislative Methods* (1907), 134 *et seq.;* State Legislative *Manuals*. F. D. Bramhall.

BILLS OF CREDIT. The Constitution of the United States provides that no state shall "emit bills of credit" or "make anything but gold and silver coin a tender in payment of

debts" (Art. I, Sec. X, ¶ 1). The appearance of this provision is accounted for by the monetary difficulties at the time the Constitution was adopted. The experience of the states with paper money had been a sad one. Madison in the *Federalist* speaks of the "pestilent effects of paper money on the necessary confidence between man and man, on the necessary confidence in the public councils, on the industry and morals of the people, and on the character of republican government."

The meaning of the term has been passed on by the Supreme Court. In Craig *vs.* Missouri, 4 *Peters* 410 (*see*) it was held that "'to emit bills of credit conveys to the mind the idea of issuing paper intended to circulate through the community for its ordinary purposes, as money; which paper is redeemable at a future day." The phrase was, however, held not to include contracts by which the state binds itself to pay money at a future day for services actually rendered or for money borrowed. See BRISCOE VS. KENTUCKY; LEGAL TENDER CONTROVERSY; PAPER MONEY IN THE UNITED STATES. References: T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), 93; J. R. Tucker, *Constitution of the U. S.* (1899), I, 509-514, II, 824-825.

A. C. McL.

BILLS OF RIGHTS

Origin.—In their political thinking the men of the revolutionary period were much affected by the English writers of the previous century. They were also affected by the political events of that century, by the great documents of liberty that were drawn up and established, most of all naturally, by the famous Bill of Rights. They accepted the theory that government rested on consent, that even society was made by agreement, and that men entered into society or the state out of a state of nature; men as individuals existed before government or the state. According to this political thinking, men entered society only as the result of their own voluntary act; moreover, in a state of nature, before entering society, they were possessed of natural rights (*see*) and some of these—the rights of life, liberty, and property—they did not surrender when they entered society; such rights were inalienable and no government could rightly infringe upon them. The fundamental notion was, therefore, that government had only delegated powers and that certain rights were necessarily reserved and that others might be. It was perfectly natural, therefore, that when the men of those days began to form their own institutions they should declare these principles and reservations. They sometimes seemed to think that society had been dissolved by the Revolution into its individual parts and that men were entering into a new social compact (*see*). See for example the preamble to the Massachusetts constitution of 1780.

Virginia Bill.—When Virginia drew up her constitution in 1776, it was preceded by a declaration of rights, which was in fact adopted by the convention before the constitution was adopted. This declaration, the predecessor of similar declarations and bills in other state constitutions, announces the doctrine of inalienable rights, and lays down principles and privileges, which are not in every case precisely natural rights or rights which men had in a state of nature, but are, one might safely say, either the corollaries of such rights or the privileges and institutions which are supposed to preserve them. Its first and most fundamental proposition is "that all men are by nature equally free and independent, and have certain inherent rights, of which when they enter into a state of society, they cannot, by any compact deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." It declared that all power is vested in and consequently derived from the people; that government ought to be instituted for the common benefit of the people; that the people have a right to reform or abolish government; that no man or set of men are entitled to privilege and that offices are not hereditary; that the legislative and executive powers of the state should be separate and distinct from the judiciary; that elections should be frequent, certain, and regular; that "all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives," nor bound by any law to which they have not in like manner assented; that laws or their execution should not be suspended without consent of the people's representatives; that in criminal cases a man has the right to demand the cause and nature of the accusation against him, to be confronted by accusers and witnesses, to call for evidence in his favor, to be tried in a speedy trial by an impartial jury, not to be compelled to give evidence against himself nor to be deprived of liberty without due process of law or the judgment of his peers. There was also a declaration against excessive bail, against cruel and unusual punishments, against general warrants, in favor of jury trial in civil cases,

in favor of freedom of the press, in favor of a militia and against standing armies in time of peace. It was declared that the people have a right to uniform government and that no government separate from or independent of the government of Virginia ought to be established within its limits; and that no free government can be preserved "but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles." The most famous pronouncement was in behalf of freedom of religion.

Constitution of the United States.—When the Constitution of the United States was presented for adoption there was considerable criticism on the ground that it did not contain a bill of rights. The advocates of the Constitution said in defense that there was no need to state such principles and prohibitions because the government of the United States was to be one of enumerated powers. "For why," said Hamilton in the *Federalist*, "declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power, but it is evident that it would furnish, to men disposed to usurp, a plausible pretence for claiming that power." It was also urged by Hamilton that, while such declarations were well enough in monarchical governments, where people needed to announce the rights which they had wrested from the king or which they claimed as inalienably their own, they were really not needed under free popular government. "Here, in strictness, the people surrender nothing; and, as they retain everything, they have no need of particular reservations." This was shrewd argument and contained much truth; doubtless much of the popular desire for bills of rights sprang from a failure to appreciate that the new governments were to be servants not masters.

This argument did not, however, convince the men of 1788, who feared the new government they were asked to establish, and it was generally understood before the final adoption of the Constitution, that after adoption there would not be opposition to reasonable amendments declaratory of individual rights. The first ten amendments constitute, therefore, in a certain way, a national bill of rights, though they do not contain an announcement of those elementary principles of the origin of government such as were commonly held by the men of that generation or such as appear in some of our later constitutions; nothing was there said of compact, natural rights, or of the essential character of government. Able as were the arguments used against the claim that any such bill of rights was needed, it can hardly be said truthfully that it has been a mere surplusage, especially when we remember that in the case of the citizens of the territories Congress has power similar in extent and character to that of the states over their citizens.

In State Constitutions.—The state constitutions of the early day did not all contain bills of rights. There were none for example in Georgia, New Jersey, New York, and South Carolina. Rhode Island and Connecticut maintained their old charters. The other states put forth declarations in one form or another. Since that time it has been customary to include them, and now every state in the Union has a bill of rights, or a declaration of principles of this fundamental character. These provisions differ somewhat in character and extent. Some of them contain as many as forty or more articles. Others are simpler and contain as few as seventeen or eighteen. Some of them distinctly state the compact origin of the state and political society, a declaration of interest in light of the fact that in all modern political philosophy such notions have been long abandoned, and in light of the fact that modern social and political life is, in tendency at least, away from any such conception. The constitution of Kentucky adopted in 1890, solemnly declares that "all men, when they form a social compact, are equal"; and that of Texas (1876) proclaims that "all free men when they form a social compact have equal rights." Virginia retains, in her constitution of 1902, the compact doctrine set forth in her earliest bill of rights. One would hardly expect to see the political thinking of John Locke and the other compact philosophers of the seventeenth century stated calmly in American constitutions of the last half of the nineteenth century.

The contents of the famous Virginia Bill are fairly good indication of what modern bills contain, save that the latter are generally more detailed and contained additional provisions. We now find with more or less frequency definitions of treason, declarations against bills of attainder and ex post facto laws, provisions for a grand jury, and for the privilege of habeas corpus, statements concerning eminent domain and its exercise, concerning freedom of religion and other fundamental privileges and rights. These provisions are not absolutely fundamental like the assertions of the right to liberty, life, property, and the pursuit of happiness—the assertions which the bills frequently contain—but belong to that class of rights already spoken of as natural corollaries of the primary and fundamental rights. Occasionally these bills contain assertions that appear to be placed there because there is no other suitable place to put them. Oregon, in its constitution of 1857, provides in its bill of rights that "No free negro or mulatto, not residing in this State

at the time of the adoption of this Constitution, shall come, reside, or be within this State, or hold any real estate, or make any contracts, or maintain any suit therein"—an anachronistic provision which has never been repealed. Some of the states declare that the Constitution of the United States is the supreme law of the land (Washington, South Dakota, etc.) or that the state is an inseparable part of the American Union (California, South Dakota, Mississippi.) Oklahoma provides that records, books, and files of corporations shall be subject to visitorial and inquisitorial inspection. Tennessee describes the boundaries of the state, and provides for the erection of safe and comfortable prisons and for the free navigation of the Mississippi which cannot "be conceded to any prince, potentate, power, person, or persons whatever," a relic of the old dispute which meant so much in the early history of the state. Wyoming provides that no person detained as a witness in any criminal case shall be confined in any room where criminals are imprisoned. It is thus apparent that these bills, in general, contain statements of what is believed by the framers to be of high and special importance or of general application as well as those declarations of fundamental human rights which are supposed to be of universal validity.

Principles.—These provisions constitute restrictions on governmental action. In principle the more general and fundamental declarations are thought to announce rights which even the state can not take away. A well-known principle of constitutional interpretation is that a state legislature must be held to have all power which is not prohibited either expressly or by implication. But side by side with this is the principle that rights do not spring from government, but existed before government, which was created to protect and secure them. This principle is of great importance; no one needs to establish in the courts a *grant* of liberty. He is entitled to assert his right to be free from interference or restraint, and the legislation in question, if it is to be upheld, must be shown to be within the competence of the legislature. And when a constitution says that no person shall be deprived of his liberty without due process of law, the constitution contemplates the existence of liberty which was not *granted* but secured by constitutional restraint upon government. Of course in actual practice, the person defending his rights before the courts turns to precedent and to judicial decision, and those that assert validity of legislation do likewise; neither side relies on mere general theory. But the fact is that restraint upon freedom of individual action must be justified, if it is to be upheld, because it is necessary for the common good or the general welfare or because it belongs to the class of governmental regulations which have commonly been held to be within the competence of free government.

Within the last few years there have been many decisions by the courts concerning the validity of legislation declared, by those opposing the legislation, to encroach upon reserved rights and particularly liberty of free contract. The discussion, moreover, is not confined to the courts; the subject is one of general social and political interest. The courts have gradually had to adapt their decisions to the developing thought and needs of society. On the one side we find those that demand adherence to the doctrine that man can do what he will with his own and insist that the spirit of individualism be retained as the guide in constitutional interpretation; on the other side are those that insist upon the higher right of the state and the community, and upon the right of the body of the people to have the legislation that they think needful. The important fact is this, that though the doctrine of the police power of the state is now so fully developed that the courts will, in general, uphold any legislation which in their judgment is conducive to the welfare of the community and not merely wanton interference with the individual, still the presumption is in favor of liberty; the defenders of legislative enactment must show that the public is in need of the legislation in question.

See Civil Liberty; Contract, Freedom of; Due Process of Law; Police Power; Political Theories of English Publicists.

References: F. N. Thorpe, *Constitutions and Charters* (1909), *passim*; J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, 437–443; T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 365–368; A. C. McLaughlin, *The Courts, The Constitution, and Parties* (1912).

Andrew C. McLaughlin.

BILLS, TITLES OF. The state constitutions not uncommonly provide that each bill or measure shall not contain more than one "object" or "subject" which shall be stated in the title. The purpose of such constitutional provision is thus stated in an early Michigan decision: "The practice of bringing together into one bill subjects diverse in their nature and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure the passage of several measures, no one of which could succeed upon its merits, was one both corruptive of the legislator and dangerous to the State. It was scarcely more so, however, than another practice, also intended to be remedied by this provision, by which, through dexterous management, clauses were inserted in bills of which the titles gave no intimation, and their passage secured through legislative bodies whose members were not generally aware of their intention and effects" (People *vs.* Mahaney, 13 *Mich.* 481). Judge Cooley, in his *Contsitutional Limita-*

tions, thus summarizes the purposes: "*first,* to prevent hodge-podge or 'log-rolling' legislation; *second,* to prevent surprise or fraud upon the legislature . . . ; and, *third,* to fairly apprise the people . . . of the subjects of legislation. . . ." The requirement does not demand absolute particularity in the title provided it is fairly descriptive of the general purposes and contents of the act. Some constitutions have provided, and the courts have generally held even where there is no express constitutional provision, that, if a statute includes more than the title indicates, the incongruous matter may be eliminated and the remainder held valid, provided the remaining portion is in itself sensible and independent matter and capable of being executed. See Bills, Course of. References: T. M. Cooley, *Const. Limitations* (7th ed., 1903); P. S. Reinsch, *Am. Legislatures* (1907), 134 *et seq.*

A. C. McL.

BIMETALLISM. The terms, bimetallism and monometallism, describe two methods of treatment of certain gold and silver coins. In a bimetallic currency these coins are minted without limit of quantity for all persons who supply bullion of the proper standard and are made legal tender in all payments; in a monometallic currency, only coins of one of the metals are minted for private persons and made full legal tender, those of the other being minted on government account and in limited quantities only and made legal tender only for small payments.

It should be noted that in both systems coins of both metals are used, neither bimetallists nor monometallists proposing to demonetize either metal. Furthermore there is no disagreement between them regarding the desirability of so called subsidiary coins, such as our half dollars, quarters and dimes. Usually their disagreement is limited to the treatment of some one coin such as our silver dollar or the French five-franc piece, monometallists claiming that such coins should be accorded the same treatment as gold coins, while gold monometallists would coin them, if at all, only in limited quantities, the government purchasing on the open market the silver required, and would make them legal tender for small sums only.

Bimetallism has been urged as a remedy for the alleged defects of monometallism, namely its tendency to cause unnecessary fluctuations in prices, to unsettle the relations between debtors and creditors and to render hazardous the trade between nations. In gold monometallic countries prices are subject to fluctuation whenever the relation between the demand and the supply of gold changes and with every such fluctuation injustice is done either to debtors or creditors, to the former when the purchasing power of gold is thus increased and to the latter whenever it is decreased. In silver monometallic countries the same results follow every change in the relations between the demand and the supply of silver. Moreover, trade between gold monometallic and silver monometallic nations is always hazardous because of the lack of a fixed par of exchange due to the constant fluctuations in the relative values of the two metals.

It is claimed that bimetallism would remedy these evils by preventing changes in the relative value of the two metals and that this result would be accomplished by the substitution of one metal for the other in their monetary uses whenever changes in the relation between the demand and the supply of either metal in its other uses should take place. Suppose, for example, bimetallism were established at a ratio of 16 to 1 and a change in the supply or demand or both of one or both of the metals should take place which would tend to make their relative values as bullion 20 to 1. At once silver would be substituted for gold for monetary purposes, thus increasing its demand for such purposes and decreasing its supply on the bullion market, and the demand for gold for monetary purposes would be decreased and the coin thus taken out of circulation thrown upon the bullion market, thus increasing the supply there. The result would be such a readjustment in the relation between the demand and the supply of the two metals on the bullion market as to prevent anything more than a temporary departure from the ratio, 16 to 1, established by law. It might happen that such readjustments would keep stable the relation between the demand and the supply of both metals and thus maintain absolutely level the scales of justice between debtors and creditors. Granted that such an ideal result could scarcely be expected, at least, it is claimed, the relative value of the two metals would be kept unchanged and thus a fixed par of exchange be established between all nations and the changes in the purchasing power of both metals greatly diminished, any tendency in that direction caused by changing conditions of production of either metal being at least partially neutralized by the increased use for monetary purposes of the relatively cheapening metal.

The weakness in the arguments of the bimetallists is their assumption of unlimited interchangeability in the monetary uses of the two metals, the fact being that in their uses as hand-to-hand money in the form of coin, and in the payment of balances between nations or between cities in the same country, they are interchangeable to a slight degree only. Gold is too valuable for coins of low denominations and silver not valuable enough for those of high denominations and the difference in the expenses of shipment of the two metals is very great. In their use as bank and government reserves they are interchangeable to a degree, but even here the

superiority of gold is great on account of its lower cost of storage.

Not being interchangeable in their monetary uses to an unlimited extent, the readjustments in the relation between the demand and supply of the two metals upon which bimetallists base all their hopes and expectations would almost certainly not take place, and hence the ratio established by law would not be maintained upon the bullion market, and no fixed par of exchange between nations would be established.

Not being able to maintain a fixed ratio between the two metals, bimetallism necessarily establishes what has been called a limping standard, that is an alternation now of one standard and then of the other, the cheaper metal always serving in that capacity. It, therefore, renders prices subject to change whenever the market for either metal is changing, thus increasing the frequency of price changes. So far as the relations between debtors and creditors are concerned it more frequently interferes than does monometallism. Though more frequent, the magnitude of price changes under bimetallism is less than under monometallism to the extent that there is substitution of the relatively cheaper metal for the monetary uses of the dearer. To the same extent, also, the amount of the disarrangement of contracts between debtors and creditors is lessened.

See COINAGE; MONEY; MONOMETALISM; SILVER COINAGE CONTROVERSY.

References: J. L. Laughlin, *Hist. of Bimetallism in the U. S.* (1897); W. A. Scott, *Money and Banking* (1903), chs. xvi, xvii; H. P. Willis, *Hist. of the Latin Monetary Union* (1901); H. B. Russell, *International Monetary Conferences* (1898); D. M. Barbour, *The Theory of Bimetallism and the Effects of the Partial Demonetization of Silver on England and India* (1885); F. A. Walker, *International Bimetallism* (1896); R. Giffen, *The Case against Bimetallism* (1892); T. H. Farrer, *Studies in Currency* (1898). W. A. SCOTT.

BIOLOGICAL SURVEY, BUREAU OF. The work of the Biological Survey, as laid down by Congress, is conducted under three general heads: (1) investigations of the economic relations of birds and mammals to agriculture; (2) investigations concerning the geographic distribution of animals and plants with reference to the determination of the life and crop belts of the country; (3) supervision of matters relating to game preservation and protection, and importation of foreign birds and animals. In particular, the bureau has studied the habits of various alleged noxious mammals and birds, with a view to their extermination if necessary; and is preparing a large-scale zone map of the United States to accompany a report on life and crop zones, based on careful field-work in the several states. It coöperates with the states in respect to the interstate commerce in game and plumage and for the encouragement of game-farmers. The bureau is organized under the Department of Agriculture. **See** AGRICULTURE, DEPARTMENT OF; AGRICULTURE, RELATIONS OF GOVERNMENT TO. **Reference:** Department of Agriculture, *Annual Reports.* A. N. H.

BI-PARTISAN MUNICIPAL BOARDS. Boards and commissions to discharge municipal functions were originally created to offset what was believed to be the unwise and autocratic concentration of power in the hands of the mayor. In a still further effort to the same effect, as well as to offset the dangers and evils of partisanship, bi-partisan boards were created, that is boards so constituted that each of the two dominant parties had an equal number of members. The idea was that by thus recognizing parties and putting them on an equality, there would be no desire or opportunity to use the offices for partisan ends; or if attempts to do so were made, the fact that the party representatives were equally divided would serve as an effective check. The result, however, has been to divide the spoils between the parties represented; to strengthen the party idea in municipal affairs through injecting the idea of partisanship into the field of municipal administration, and to make dickering and bargaining between the parties easy and inevitable.

Bi-partisan boards have more frequently been utilized in connection with police and electoral functions, but in these fields, as in practically all others, they have failed in their purpose and are being displaced by single commissioners. In some states they have been held to be at variance with the constitution, as in the case of Michigan. For years the New York police force was administered by a bi-partisan board, but now it is under a single commissioner appointed by the mayor. **See** BOARDS, MUNICIPAL; COMMISSION SYSTEM OF CITY GOVERNMENT. **References:** D. B. Eaton, *Gov. of Municipalities* (1899), (see index under bi-partisan commissions); J. A. Fairlie, *Municipal Administration* (1901), 137, 138; L. F. Fuld, *Police Administration* (1909), 34, 37; F. J. Goodnow, *Municipal Gov.* (1909), 260, 261; Wm. McAdoo, *Guarding a Great City* (1906), ch. xxi, 347–50; New York State *Laws, Statutes, etc.* (1895), II, Pt. ii, ch. 569, 1256–1265; T. Roosevelt, "Municipal Administration: N. Y. Police Force" in *Atlantic Monthly,* LXXX (Sept., 1897), 291, 292; Richard Wheatley, "New York's Police System" in *Chautauquan,* XVI (Mar., 1893), 691, "New York Police Dept." in *Harper's Magazine,* LXXIV (Mar., 1887), 504; Charles Williams, "New York Police" in *Contemp. Review,* VIII (Feb., 1888), 217, 218; D. F. Wilcox, *Study of City Gov.* (1897), 303–6.

CLINTON ROGERS WOODRUFF.

BIRNEY, JAMES GILLESPIE. James Gillespie Birney (1792–1857) was born at Danville, Ky., February 4, 1792. He was admitted to the bar in 1814, and in 1816 was elected to the assembly. In 1818 he removed to Alabama, where he served in the first legislature of the state. He had become an advocate of African colonization and gradual emancipation, and in 1831 was appointed agent for the southwest of the American Colonization Society. In 1833 he removed to Kentucky. The next year he freed his slaves, renounced the Colonization Society and became an abolitionist. In 1835 he established at Cincinnati an abolition paper, *The Philanthropist.* In 1837 he was made secretary of the American Anti-Slavery Society and removed to New York. In 1840, and again in 1844, he was the candidate of the Liberty party for President of the United States. He published numerous pamphlets, essays, and addresses on slavery. He died at Perth Amboy, N. J., November 25, 1857. See SLAVERY CONTROVERSY. References: W. Birney, *James G. Birney and his Times* (1890). W. MACD.

BIRTH RATE. See POPULATION OF THE UNITED STATES; VITAL STATISTICS.

BLACK AND TAN REPUBLICANS. Since about 1890 the Southern Republicans have been divided into the two factions of Lily Whites (*see*) and Black and Tan. The latter aim to continue the combination of white and colored voters; and up to 1913 included most of the federal office holders. They have often taken a prominent part in the national conventions of the party. In 1892 the Republican platform declared that the negro is entitled to citizenship, that his political and social condition is unhappy and deplorable, and that he can look only to the Republican party for relief.

In January, 1912, there was a spirited contest between the two factions in Louisiana. The Black and Tans were led by a negro, and were defeated in the primaries. One reason for the continuance of the Black and Tan regime is its effect in holding the negro Republican vote in northern states.

The national Republican party is almost bound by tradition to support the Black and Tan faction, and give it the federal patronage. The Black and Tans predominate in the counties with a large black population, the whites in these counties being usually Democrats. The opposing faction, the Lily Whites are mostly found in the counties where fewer blacks live.

References: *Appleton's Annual Cyclopaedia*, XVII (1892), 739–740; *ibid*, XIX (1894), 741, 742; J. M. Callahan, "Pol. Parties in the South since 1860" in *The South in the Building of the Nation* (1909). T. N. HOOVER.

BLACK BELT. The region comprising portions of South Carolina, Georgia, Alabama, Mississippi and Louisiana in which the soil is black and especially suited to cotton. It is also an area in which the colored population is numerically predominant over the white. O. C. H.

BLACK COCKADE. The badge of the Federalist party, assumed during the X Y Z agitation with France in 1798, as an expression of disapproval of the French tricolor cockade worn frequently by the Republicans, and as a patriotic reminder of the American Revolution when the black cockade was worn as a symbol of patriotism. See FEDERALIST PARTY; X Y Z. O. C. H.

BLACK HORSE CAVALRY. A derogatory appellation given to a coterie of Republican members in the New York legislature charged with selling legislative privileges and extorting money from corporations by the introduction of blackmailing legislation. Much light was thrown on its methods by the investigation connected with the conviction of Senator Allds in 1910. See CORRUPTION, LEGISLATIVE. O. C. H.

BLACK JACK. A nickname of General John A. Logan, given him by the soldiers under his command during the Civil War, because of his dark complexion, (supposed by some to have been due to Indian blood). It gained political currency during the presidential campaign of 1884. See REPUBLICAN PARTY. O. C. H.

BLACK REPUBLICANS. A term commonly applied to Republicans by Democrats in the early period of the Republican party. Stephen A. Douglas, in the debates with Lincoln, frequently used the expression. References: T. C. Smith, *Parties and Slavery* (1907), 167; J. T. Morse, *Abraham Lincoln* (1899), I, 130. T. N. H.

BLACK WARRIOR. See CUBA AND CUBAN DIPLOMACY; SPAIN, DIPLOMATIC RELATIONS WITH.

BLACKLISTING. The blacklist of the early period of labor controversies was a printed list of the names of workmen circulated among employers, who had entered into a previous agreement to refuse employment to those so listed. Such agreements are to-day illegal, but the same thing is done through perfectly legal methods of exchanging information, from a list, kept at the central employment offices of employers' associations. So in this way labor agitators are frequently blacklisted. See EMPLOYERS' ORGANIZATIONS; LABOR ORGANIZATIONS; LOCK OUTS; STRIKES AND BOYCOTTS. References: F. H. Cooke, *Law of Combinations, Monopolies and Labor Unions* (1909), ch. viii; W. J. Strong, "The New Slavery" in *Arena*, XXI (1899). J. R. C.

BLACKSTONE, POLITICAL THEORIES OF. See POLITICAL THEORIES OF ENGLISH PUBLICISTS.

BLAINE, JAMES GILLESPIE. James G. Blaine (1830–1893) was born at West Brownsville, Pa., January 31, 1830. In 1854 he removed to Augusta, Maine, where he became editor and part owner of the *Kennebec Journal*. In 1857 he became editor of the *Portland Advertiser*, again editing the *Journal* in the campaign of 1860. From 1858 to 1862 he was a Republican member of the legislature, and then was elected to Congress, holding his seat in the house until 1875. From 1869 to 1875 he was Speaker. His attitude towards reconstruction was that of a strong Republican partisan, and he was one of the most persistent in waiving the "bloody shirt" in presidential campaigns and public discussions. In 1876 he was charged, on the basis of the "Mulligan letters," with having taken bribes, but his brilliant defense was accepted by his friends as a complete vindication. In 1876 and 1880 he was a strong candidate for the presidential nomination; and in 1884 was nominated, but defeated. In 1876 he was elected to the Senate, and in 1881 was appointed Secretary of State, but resigned after about a year; his diplomacy was directed chiefly toward influencing the Latin America powers to keep the peace and toward an aggressive isthmian policy. At the Republican conventions of 1888 and 1892 his name was freely used, but without authority. He served from 1889 to 1892 as Secretary of State under Harrison, and laid down a drastic policy against England in the Alaska fishery dispute. He died in Washington, January 27, 1893. He wrote *Twenty Years of Congress* (2 vols. 1884–1886). See ELECTIONS, PRESIDENTIAL; REPUBLICAN PARTY; SPEAKER OF THE HOUSE OF REPRESENTATIVES; STATE DEPARTMENT. **References:** Gail Hamilton (M. A. Dodge), *Biog. of J. G. Blaine* (1895); E. Stanwood, *J. G. Blaine* (1905); J. F. Rhodes, *Hist. of the U. S.* (1893–1905), IV–VII, *passim*; H. B. Fuller, *Speakers of the House* (1909), ch. vi; M. P. Follett, *Speaker of the House* (1896). W. MACD.

BLAIR, MONTGOMERY. Montgomery Blair (1813–1883) was born in Franklin County, Ky., May 10, 1813. In 1835 he graduated from West Point, and served for a few months in the Seminole War. In 1836 he resigned his commission, was admitted to the Missouri bar, and in 1839 became United States district attorney for that state. From 1843 to 1849 he was judge of the court of common pleas. In 1852 he removed to Maryland. On the passage of the Kansas Nebraska Act, in 1854, he withdrew from the Democratic party and presently joined the Republicans; with the result that in 1858 he was removed by Buchanan from the office of United States solicitor for the court of claims, to which he had been appointed in 1855. In the Dred Scott case he was of counsel for Scott. In 1860 he was chairman of the Maryland Republican convention, and in 1861 was made Postmaster General. His administration of the department resulted in numerous improvements in the service, and his action in excluding from the mails certain disloyal newspapers was sustained by Congress. His conservative views, however, joined to persistent hostility to the administration, cost him the support of his party, and in 1864 Lincoln asked for his resignation. Thereafter he acted politically with the Democrats. He died at Silver Spring, Md., July 27, 1883. See CIVIL WAR, INFLUENCE OF, ON AMERICAN GOVERNMENT; POST OFFICE DEPARTMENT. **References:** J. G. Nicolay and J. Hay, *Abraham Lincoln* (rev. ed., 10 vols. 1910); Gideon Welles, *Diary* (1911); J. F. Rhodes, *Hist. of the U. S.* (1893–1905). W. MACD.

BLAND-ALLISON SILVER ACT. A bill which Congress passed in 1878 for increasing the coinage of silver. Richard Parks Bland, a representative from Missouri, introduced a measure into the House in 1876 for free and unlimited coinage of silver, which passed in 1877 by a vote of 163 to 44. The Senate, through the influence of Senator Allison of Iowa, voted (48 to 21) that the volume of silver bullion to be purchased for coinage into dollars be limited to not less than $2,000,000 or more than $4,000,000 per month. The bill was disapproved by President Hayes, but carried over his veto. See CRIME OF 1873; SILVER COINAGE CONTROVERSY; SIXTEEN TO ONE. **Reference:** D. R. Dewey, *Financial Hist. of the U. S.* (1907), 402, bibliography. D. R. D.

BLIFIL AND BLACK GEORGE. Contemptuous epithets applied to President John Quincy Adams (*see*) and Henry Clay (*see*) by John Randolph in a speech in the Senate (1826) in which he alluded to the supposed coalition between Adams and Clay as "the coalition of Blifil and Black George . . . the combination . . . of the Puritan and the blackleg." The terms were borrowed from Fielding's novel, *Tom Jones*. See NATIONAL REPUBLICAN PARTY. O. C. H.

BLIND, EDUCATION OF THE. See EDUCATION OF THE BLIND.

BLOCKADE. Definition.—Blockade is a measure of war by which one belligerent aims to cut off the communication of the other belligerent. Blockades are usually established before ports by a line of war ships, though rivers, gulfs, bays, or sections of a coast may be placed under blockade, as was the case in 1898 when President McKinley proclaimed a blockade of "the North coast of Cuba, including all ports

on said coast between Cardenas and Bahia Honda." It is generally maintained that a strait connecting open seas is not liable to blockade. A blockade may not extend within the jurisdiction of a neutral state, *e. g.*, a river flowing through a belligerent state but having its mouth in a neutral state may not be blockaded. According to the Declaration of London of 1909 which may be regarded as showing the consensus of opinion on this point:

Art. 1. A blockade must be limited to the ports and coasts belonging to or occupied by the enemy.
Art. 18. The blockading forces must not bar access to ports or coasts of neutrals.

Effectiveness.—According to the rule of the Treaty of Paris of 1856 "blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient to prohibit access to the coast of the enemy." This clause has generally been sustained though it is recognized that it cannot be literally interpreted. It is aimed to meet the requirement of the presence of an adequate force and to prevent the establishment of paper blockades of the earlier days.

Paper blockades (*see*) were common during the Napoleonic wars. By these, wide areas were proclaimed as under blockade and no adequate force was placed in the neighborhood though ships overtaken on the sea and bound for the region proclaimed were treated as though bound for a blockaded port.

The Declaration of London of 1909 will, if ratified, limit valid capture to the area of operations of a fleet maintaining an effective blockade.

Violation.—A blockade may be violated by ingress or egress, though it is now customary to allow to neutral vessels within the port at the establishment of the blockade a period in which to load and depart. In the Spanish-American War (*see*), 1898, the United States allowed thirty days for such purpose.

In general the passing of a blockade or an attempt to pass is regarded as a violation. The continental practice has been toward a strict interpretation, regarding violation as an actual attempt to pass the blockading line, while the Anglo-American practice has favored penalty for constructive violation beginning from the time of sailing with intent to enter a blockaded port. A vessel which is ignorant of the existence of a blockade is not liable to penalty.

Notification may be general through public declaration or special when a vessel approaches the line of blockade. It has usually been maintained that a vessel leaving the port of a neutral state after that state has received notification is liable to penalty.

The penalty for violation of blockade is generally condemnation of the vessel, and in case the cargo is involved in the guilt of the vessel, as when both vessel and cargo belong to the same person, the cargo is also liable.

Cessation.—A blockade comes to an end when it ceases to be effective unless this be because of stress of weather. It may cease to be effective through the voluntary or forced withdrawal of the fleet or may be no longer necessary when the blockaded port falls into the blockader's hands. Peace also puts an end to blockade.

See BELLIGERENCY; BLOCKADE PROCLAMATION; BLOCKADE RUNNERS; MARITIME WAR; NEUTRALITY, PRINCIPLES OF; PACIFIC BLOCKADE.

References: P. Fauchille, *Du Blocus Maritime* (1882); G. G. Wilson, *Int. Law* (1910), 439–458; J. B. Moore *Digest of Int. Law* (1906), VII, §§ 1256–1286; bibliography in A. B. Hart, *Manual* (1908), § 188.

GEORGE G. WILSON.

BLOCKADE PROCLAMATION. While in the early proclamations the Civil War was called an insurrection, it passed beyond that state and became a war in the legal sense as soon as by public proclamation the United States forces were authorized to take such action in regard to the persons and property of foreign citizens, as could be justified only by the existence of a state of war. Even the proclamation of April 19, 1861, announcing the blockade of the southern ports speaks of "an insurrection against the Government of the United States," yet as will be evident a blockade which was warlike in character and effects was proclaimed. The so-called "insurgent blockade," is not regarded as binding upon the vessels of foreign states. The blockade of 1861 was on the other hand general. The main reference to blockade in the proclamation is like that of a proclamation of blockade against a foreign state. This section reads in part as follows:

Now therefore, I, Abraham Lincoln, President of the United States, with a view to the same purposes before mentioned, and to the protection of the public peace, and the lives and property of quiet and orderly citizens pursuing their lawful occupations, until Congress shall have assembled and deliberated on the said unlawful proceedings, or until the same shall have ceased, have further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States and of the laws of nations in such case provided. For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave either of the said ports, she will be duly warned by the commander of one of the blockading vessels, who will indorse on her register the fact and date of such warning, and if the same vessel shall again attempt to enter or leave the blockaded port, she will be captured and sent to the nearest convenient port, for such proceedings against her and her cargo as prize, as may be deemed advisable.

See BLOCKADE; CONFEDERATE STATES OF AMERICA; MARITIME WAR.

References: J. D. Richardson, *Messages and Papers of the President* (1896), VI, 14, 15; J. F. Rhodes, *Hist. of the U. S.* (1900), III, 364, 395.

GEORGE G. WILSON.

BLOCKADE RUNNERS, 1861-1865. The blockade of southern ports caused the price of cotton to fall to almost nothing in the south and rise to fabulous sums in Europe. The necessities and luxuries of life, very cheap in Europe, rose to almost prohibitive prices in the Confederacy. This opportunity to reap enormous double profits caused adventurous business men at both ends of the line to take the risk of running the blockade. Many vessels especially adapted by size, color, and speed were built in England and Scotland for the purpose. The United States Government protested to the British against this, but Earl Russell declared that it did not contravene either British law or the law of nations. To impose on neutrals the duty of preventing their subjects from engaging in such trade would give an undue advantage to belligerency and tempt a friendly neutral to become an active ally of that belligerent whose trade was most essential. The right of neutrals to trade with belligerents is unquestioned, but goods destined for blockaded ports are subject to confiscation. Most of the goods came from England to ports of the West Indies and were there transferred to blockade runners and carried chiefly to Wilmington, Charleston, Savannah, Mobile, or Galveston. Return loads of cotton and occasionally other articles were transhipped in the West Indies for England. Using smokeless coal and approaching by night with lights extinguished and all sounds muffled, most of them escaped during the earlier years; but toward the last, as the blockades became more efficient, few succeeded. Extravagant wages were paid for commanders and sailors, and still great profits realized. "The *Banshee* one of the earliest built and not one of the largest and best steamers, made eight successful round trips; on the ninth she was captured but she had paid her shareholders 700 per cent." The Confederate Government encouraged and regulated the trade and shared the profits and even engaged in it directly. There was much popular and some official opposition on the ground that it injured the Government by encouraging luxury and speculation and carrying money out of the country. See BELLIGERENCY OF THE CONFEDERATE STATES; BLOCKADE; NEUTRAL TRADE. References: J. F. Rhodes, *Hist. of the U. S.* (1904), V, 395-410; and references; *U. S. Foreign Relations*, 1861 to 1866, for correspondence with England; J. R. Soley, *Blockade and Cruisers* (1883); J. M. Callahan, *Diplomatic Hist. of the Southern Confederacy* (1901), chs. i-v; W. Watson, *Adventures of a Blockade Runner* (1892).

WM. R. MANNING.

BLOCKS OF FIVE. A phrase referring to the purchase of the votes of floaters (*see*) at wholesale rates. It originated from a letter said to have been written during the compaign of 1888 by Col. W. W. Dudley, treasurer of the Republican National Committee, to the chairman of the Indiana state committee directing him to secure the votes of floaters in "blocks of five." O. C. H.

BLOODY BILL (1833). Appellation given by the South Carolina nullifiers to the Force Bill (*see*) an act passed by Congress in 1833, which authorized President Jackson (*see*) to use the Army and Navy if necessary in the execution of the tariff laws which had been, by that state, declared null and void. See NULLIFICATION CONTROVERSY. O. C. H.

BLOODY SHIRT. An expression applied to American political controversies following the Civil War, said to have been used first by Oliver P. Morton (*see*) indicating the calling up of the issue of the Civil War for partisan purposes. To "wave the bloody shirt" meant to denounce the South and appeal with fervid oratory to northern patriotism. O. C. H.

BLUE LAWS OF CONNECTICUT. The religion of the colonists of Connecticut was so reflected in their laws, that the words "blue" or "true blue" are used to characterize these laws. Among the capital offences were the worship of any other God but the Lord God; blasphemy; being a witch, or consulting with a familiar spirit; wilful murder not in defence; slaying by poisoning, or such devilish practices; children above sixteen cursing or smiting parents, unless the parents had been unchristianly negligent in the education of those children. Going to church was compulsory. Unnecessary travel on the Sabbath was forbidden. References: A. B. Hart, *Am. Hist. told by Contemporaries* (1906), 488-494; A. Hamilton, *Itinerarium* (1907), 120, 195. T. N. H.

BLUE LIGHT FEDERALISTS. The name applied to the Federalist opponents of the War of 1812. The expression originated in 1813 from the claim of Commodore Decatur that blue light signals set to warn the British had prevented him on several dark nights from getting to sea from the port of New London with his two frigates. The Federalist opponents of the war were charged with setting the signals and soon all New England opponents of the war were called "Blue Light Federalists." See FEDERALISTS. O. C. H.

BLUE LODGES. The secret societies organized October, 1854, in Missouri, for the purpose of extending slavery into Kansas. See BORDER RUFFIANS; KANSAS STRUGGLE.

O. C. H.

BLUE SKY LAW. An act passed by the state of Kansas in 1911, providing that corporate securities should not be offered for sale till they had been passed upon by a state commission which should certify that there was

property behind the stocks or bonds sufficient to justify their issue. The term "blue sky" refers to the disposition of promoters to capitalize intangible assets, so that they might claim blue sky as part of the good will and assets of corporations. Since the passage of the Kansas Act similar legislation has been enacted in several other states. See CORPORATION CHARTERS; FRANCHISES TO CORPORATIONS; INSPECTION AS A FUNCTION OF GOVERNMENT; SECURITIES, COMMISSION ON. A. B. H.

BLUEJACKETS. A name given to the sailors in the naval service to distinguish them from the marines. O. C. H.

BLUNTSCHLI, JOHANN CASPER. See POLITICAL THEORIES OF CONTINENTAL PUBLICISTS.

BOARD OF TRADE. In 1694 bills were introduced in Parliament for the purpose of bringing colonial trade under the control of a council responsible to that body. But before final action was taken William III revoked the former commission (*see* LORDS OF TRADE) and appointed a Board of Trade consisting of seven *ex-officio* members—holders of the great offices of state—and eight active members, two lords and six commoners. This board and its successors had the direction of colonial affairs for eighty-seven years. Until 1720 it was an extremely active and efficient body and did much to strengthen the policy of imperial control. During the era of Walpole its membership deteriorated and its influence suffered. In 1752 new powers were granted and in 1765, for a single year, it was made a ministerial executive office of government, but from 1768 the power and influence of the Board of Trade gradually declined and it was finally abolished in 1782.

The Board of Trade had little or no executive power, but was a body designed to gather information, and, by its representations to advise the Privy Council (*see*). Thus, all charters, commissions and instructions were discussed and drafted in the Board, and usually adopted without change by the Council. Provincial governors and colonial officials were required to report to the Board and private individuals were called before it. Matters of trade and administration, and military affairs were there decided and transmitted to the colonies either directly by a despatch, or by an Order in Council issued on the representation of the Board. Colonial laws were submitted to the Board, and, with the opinion of the law officers of the Crown, referred to the Council with a representation advising their acceptance or disallowance. Although the Board had no appellate jurisdiction in colonial cases, it frequently heard the parties and advised the Council as to the expediency of allowing the appeal.

See ACTS OF TRADE; COLONIAL CHARTERS; COLONIZATION BY GREAT BRITAIN IN AMERICA; LORDS OF TRADE; NAVIGATION ACTS.

References: E. Channing, *Hist. of the U. S.* (1908), II, 230–238; M. E. Clarke, "The Board of Trade at Work" in *Am. Hist. Rev.*, XVII (1911), 17–44; C. M. Andrews, *British Committee of Trade* (1908), 113–114; O. W. Dickerson, *Am. Colonial Government* (1912), chs. i, ii, iv, v. EVERETT KIMBALL.

BOARDS, MUNICIPAL. In the administration of American cities during the first half of the nineteenth century the supervision of various public services (such as police and fire protection, water supply, and streets) was entrusted to standing committees of the city council. This was the plan brought over from England and it remains the system of administrative supervision in English cities to the present day. But in America the system of administration by council committees worked unsatisfactorily; the committees were often constituted by a process of logrolling; and their members frequently devoted their chief energies to the task of getting favors for their own wards or districts at the expense of the public treasury. Consequently the supervision of important departments was in due course taken away from the council altogether and vested in the hands of special boards chosen by popular vote. This tendency first appears prominently in the New York charter of 1849 but the precedent was soon followed by other cities. In Cleveland, for example, a board of public improvements was provided for in the municipal organization act of 1852; and in other cities such matters as police administration and fire protection were given to separately elected commissions.

Elective and Appointive Boards.—Although some increase in administrative efficiency was obtained as a result of this general change, it was soon made apparent that competent members of such boards could not usually be obtained by popular election. Consequently the task of selecting them was, as time went on, taken from the voters and entrusted to the mayor, with the provision that his selections should be subject to confirmation by the upper branch of the city council. New York City made this change in its amended charter of 1857; Philadelphia and Baltimore made several changes in the same direction a few years later. In the case of the police department the power of appointing the controlling board or commission was in some cases given to the state authorities, as for example, in Baltimore (1860) and in St. Louis (1861). In both these cities the supervision of municipal police by state boards has continued to the present time.

Present Status of Board System.—In the present organization of American cities some departments are still entrusted to boards chosen by popular vote. The departments of edu-

cation and public works are usually in this category. Other public services, such as the care of public health, supervision of the city library, water supply, and maintenance of parks, are more commonly entrusted to boards appointed by the mayor. The police, fire protection and law departments are more often placed in charge of single commissioners. In a few cases, as for example in the Board of Estimate and Apportionment in New York City, the policy of selection *ex officio* is applied, this board being made up of the mayor, the comptroller, the president of the board of aldermen, and the five borough presidents. Sometimes, though rarely, municipal boards are appointed by the courts, as for example the Board of Education in Philadelphia, the South Park Commissioners in Chicago and the trustees of the Franklin Fund in Boston.

Organization of Boards.—Municipal boards are usually composed of three, five or seven members. The term of office varies as a rule from three to five years and provision is commonly made for the retirement of one member each year. In the larger cities when the work of a board makes heavy demands upon the time of members it is usual to pay salaries to all; in some cases only the chairman of the board is paid; in other cases the service is wholly unpaid and this is particularly true of boards in smaller cities.

Bi-Partisan Boards.—Provision is sometimes made for bi-partisan representation in the composition of municipal boards, the requirement being in such cases that at least one member shall be chosen from the ranks of each of the leading political parties. This arrangement is used particularly in the case of those boards which have semi-political duties to perform such as boards of registrars of voters or election boards. In cities where the voters' lists are compiled by the board of assessors the same policy is applied to the composition of this body (*see* BI-PARTISAN MUNICIPAL BOARDS).

Single Commissioners.—Much has been written on the question whether the board or single commissioner system is preferable from the standpoint of administrative efficiency; but in the last analysis the answer to this question depends upon the nature of the work to be performed. Some departments lend themselves more readily to one system; some to the other. The single commissioner plan is peculiarly adapted, for example, to the police department, where promptness and decision are needed; the board system is quite as obviously appropriate in the management of the city's schools where careful deliberation on matters of general policy is above all things necessary.

As a rule the organization and functions of boards are provided for in the city charter but in some cases these matters are left within the field prescribed by state laws, to be dealt with in the city ordinances.

See BI-PARTISAN MUNICIPAL BOARD; COMMISSION SYSTEM OF CITY GOVERNMENT; MUNICIPAL GOVERNMENT.

References: A. R. Hatton, *Digest of City Charters* (1906), 272–350; F. J. Goodnow, *City Government in the U. S.* (1904), 191–199; W. B. Munro, *Government of Am. Cities* (1912), ch. x; J. A. Fairlie, *Essays in Municipal Administration* (1908), ch. xviii.

WILLIAM BENNETT MUNRO.

BOARDS OF CONTROL, STATE. Boards of control for state institutions are of two distinct types *viz.*, a single board for each institution; and a general board for a number of institutions. Among the institutions most concerned are the state universities, and the state asylums, prisons, and reform schools. The makeup of these boards varies in different states. The most common plan is that of appointment by the governor, in some cases for life, in others for ten years or less. It is a usual plan for a governor to make the appointments for terms longer than his own term. The appointments are often made in return for political services rendered and are regarded as a distinction, as a step in political preferment, and in some cases as a means of corrupt personal gain (*see* PUBLIC SUPPLIES, PURCHASE OF). The number of members varies; some boards of trustees of state universities having twenty members. They usually serve without pay, with the exception of their expenses incident to board meetings.

The boards for the state universities, in conjunction with the presidents, and sometimes with selected faculty members, purchase grounds, erect buildings, and carry out the administrative work. The directing force is usually the president of the university. In many states the trustees of the universities have no connection with the public schools. In others, the board is at the head of the entire system. An attempt to bring all the state universities and the public schools of Ohio under one state board, in 1912, failed.

For schools and universities, separate administrative officers seem to work better. For other institutions, the general board plan has some advantages. It makes coöperation in the different institutions possible and it is a more economical system. The single board for each institution tends to extravagance since the members often live in one community or section, and feel a responsibility for spending public money in that community. Often, too, goods and provisions are bought without competition.

The general board has the disadvantage of being slow in administering its affairs, and because of the number of institutions it has to look after, may fail to know the needs of all. The single board plan places more responsibility on the superintendent of the institution. There is a movement towards co-

relation among boards with a proper division of labor. One state institution produces the agricultural products for the other institutions; another makes brooms, shoes, etc., to supply the inmates of various institutions. This coöperation even extends to the making of desks, for the public schools and state universities by prison labor (*see*). The Wisconsin Board of Public Affairs has very complete power in making investigations and reports, especially in regard to the cost of living. The advantages of the central board system seem to overbalance the disadvantages and it has spread into Minnesota, Oklahoma, and other states.

See CHARITIES, PUBLIC AGENCIES FOR; DEFECTIVE CLASSES, PUBLIC CARE OF; EDUCATIONAL ADMINISTRATION; HEADS OF STATE DEPARTMENTS; INSTITUTIONS, STATE ADMINISTRATION OF; PUBLIC ACCOUNTS; UNIVERSITIES, STATE.

References: A. B. Hart, *Actual Government* (1908), 143; L. P. Jefferson, "Board of Public Affairs" in *Pol. Sci. Rev.*, V (Aug., 1911), 429–439; F. N. Thorpe, *Federal and State Constitutions* (1909). T. N. HOOVER.

BOARDS OF EDUCATION See EDUCATION, BOARDS OF.

BOARDS OF ESTIMATE. In some cities it is the practice to entrust the initial preparation of appropriation bills to a board composed generally of executive officers, on the principle that such a body is more accurately informed in regard to the needs of all branches of municipal administration. The appropriation bill so framed may then be submitted to the city council. In New York City the Board of Estimate and Apportionment is the substantial governmental power in the city, having large functions beside that of apportionment, and resembling commission government. See APPROPRIATIONS, AMERICAN SYSTEM; COMMISSION SYSTEM OF CITY GOVERNMENT; ASSESSMENT OF TAXES. Reference: F. R. Clow, "City Finances in the U. S." in Amer. Econ. Assoc., *Pub.*, Third Series, II (1901), No. 4, 37–43.

D. R. D.

BOARDS OF PUBLIC WORKS. Boards of public works continue to be a popular form of administering the water works, lighting plants, streets, and similar undertakings. In some instances, these boards are made up of a group of elective or appointive officials, or both, and sometimes are in charge of a single administrative commissioner appointed by and responsible to the mayor. Formerly such boards were often elected by the legislative body, because it was thought that in this way the dangers of concentration would be eliminated, or at least diminished. Sentiment now favors concentration, with strict civil service regulations, the mayor retaining power of appointment and removal of the head of the department for cause. The tendency is now (1913) toward single commissioners, especially in cities having the commission system of government (*see*). See BOARDS, MUNICIPAL; COMMISSIONS IN AMERICAN GOVERNMENT; PUBLIC WORKS, NATIONAL; STATE AND MUNICIPAL. C. R. W.

BOARDS OF REVIEW. In cities where there is more than one assessor it is often the rule that the assessors shall sit as a board of review to consider complaints against the valuations made by a single assessor. In states where the county system of government (*see*) is developed there is an elective board of tax commissioners which acts as a board of review; and it has been further proposed that state tax commissioners should be entrusted with similar revisionary powers. In Ohio there are so-called city boards of review appointed by the state board of equalization, which practically exercise the duties of local boards of equalization. This responsibility of review is to be distinguished from that of equalization, which is concerned with securing uniformity of assessment, rather than correcting unjust valuation of the property of a single taxpayer. In some states, review is made by courts, but the conditions of appeal are often so expensive that court review is a remedy rarely resorted to. See ASSESSMENT OF TAXES; TAXES, EQUALIZATION OF.

D. R. D.

BOARDS OF TRADE. Many cities and smaller places have organizations of business men, called boards of trade; sometimes select bodies having one or more representatives from each branch of business; more often including a large number of the principal business men. Such boards usually have permanent quarters, sometimes owning and occupying exclusively an entire building.

The principal functions of boards of trade are four: (1) to maintain a representation of such joint civic interests as freight rates; (2) leadership in public improvements relating to trade, such as new terminals, bridges and railroads, and improvement of port facilities; (3) the general welfare of the communities, including such subjects as technical education, improvement of housing and conditions of occupation; (4) by relations with similar bodies elsewhere in the United States and even in foreign countries, the boards of trade constitute a link between commercial interests the world over.

Some boards of trade keep up a regular department with a permanent secretary for the civic part of their interests. Through uncontrolled contact with the leading men in the community the boards of trade have in many places become substantially an adjunct to the city government, making suggestions for public

work, and improvement in public service, instigating investigations and publishing criticisms of the city governments, especially in insisting upon proper financial supervision and bookkeeping.

See BUSINESS, GOVERNMENT RESTRICTION OF; CHAMBERS OF COMMERCE; EXCHANGES.

Reference: Boards of Trade of different cities, *Reports* (annual and special).

ALBERT BUSHNELL HART.

BOARDS, STATE EXECUTIVE

Origin of the System.—When the colonies were founded, the British Government was accustomed to a system of governing boards and this system was applied to the American colonies down to the Revolution (*see* BOARD OF TRADE). In the colonial governments, however, standing committees were hardly known and the only board with which they were very familiar was the council (*see* COLONIZATION BY GREAT BRITAIN IN AMERICA). During the Revolution, however, both the Continental Congress and the state congresses and conventions set up a variety of boards, such as the treasury board, and the system has steadily developed in national, state, municipal and local governments, particularly in the states.

Reasons for the System.—The main reasons for this system appear to be: (1) a jealousy of the state governor and an unwillingness to enlarge his powers, to correspond with the increase in the functions of government; (2) a desire to accommodate local interests in the control of local institutions; (3) the increase of special functions in which expert knowledge and continuous administration is essential; (4) the desire to take out of the ordinary political systems such functions as education, the care of the defective, the control of the electoral machinery, etc.; (5) in the last three decades has been added another type of board, *viz.*, the administrative, which combines legislative, executive and judicial functions, such as the railroad commissions, public utility commissions, etc.

The whole method of state boards is an effort to get away from the traditional principle that legislative and executive functions should not be in the same hands. Many of the boards receive lump appropriations from the legislatures to be expended according to their discretion for carrying on their work or institution. To some of them, such as gas, water and railroad commissions, is committed the authority to regulate rates. Many of the boards have very considerable powers of appointment, not simply of subordinates, but of well paid heads of institutions. Some make judicial or semi-judicial decisions of great significance.

Make-up.—State executive boards, and the board system prevail throughout the states; and the tendency is always toward more boards. These boards may be classified into: (1) general administrative boards; (2) boards for local institutions. Boards are provided for in many constitutions, and many more are created by statute. The make up of boards varies. Many of them are composed wholly of certain officers in the executive department of the state, acting *ex officio*. Others are made up in part of executive officers, and in part of members elected or appointed. Some boards are appointed by the governor, a few by courts, others are elected by the voters. Among the most important boards are the following.

State Board of Education.—The general administration of the public school system is usually under this board which has many and great powers, and which in several states adopts text-books for the schools of the state. This offers many opportunities for graft. California has met this difficulty by having the text-books prepared and printed by the state printer, and sold at cost. In some states this board also has the power of the certification of teachers. This discloses one of the elements of weakness in the system. In Ohio, in the early part of the twentieth century was disclosed a wide-spread practice of exchange by state school examiners who traded state certificates to members of county teachers' institute committees for the consideration of institute engagements to lecture at alluring terms.

Boards of Pardons.—These are provided for in most states. Sometimes the governor can act alone. There are usually limitations in the constitution upon the exercise of the pardoning power, such as pardoning before conviction, and pardoning in impeachment cases.

Boards of Health.—These are usually composed of or controlled by physicians. Their duties are intimately connected with the local boards of health. These boards are becoming of much more importance than formerly.

Boards of Public Works.—These are provided in various states, by election or appointment with duties relative to state-owned property. In some of the states, the members of this board have greatly abused their powers, for the benefit of political friends, or relatives.

Prison Boards.—Prison boards have some difficult problems in the administration of prison affairs, especially because of constitutional prohibitions of contract prison labor. Farm prisons seem more practical but make escape easier. The plan of prison manufacture of all goods for state schools, colleges, and other institutions, while it will solve the question of the idle house, is not conducive to the best interest of the state institutions which buy the products.

Boards of Control.—The system of special boards for separate institutions such as insane hospitals, institutions for the blind, deaf and dumb, feeble minded, dipsomaniacs, etc., has been very common but subject to the objection of the extra expense of numerous boards and the lack of uniformity in their management. The system is being supplanted by state boards of control over all similar institutions.

Election Boards and Commissions.—A very important state instrumentality nowadays is a board of election commissioners, whose duty it is to prepare the official ballots, which means that they rule upon the question who is entitled to appear on the official ballot. They appoint in some states judges at the polls and other minor election officials; they supervise recounts; and in general carry into effect the body of electoral law. The growth of the primary nominating system has much extended the power of these commissions.

Civil Service Boards.—In those few states which have a statutory system for state officers, there is always a commission to carry it out, because the voters do not trust the governors and other elective officials, and because there is a technical machinery of examinations, records, etc., which can well be adjusted by a board. These state boards sometimes also have jurisdiction over appointments in cities, but more commonly there are special city boards for that purpose.

See COMMISSIONS IN AMERICAN GOVERNMENT; EXECUTIVE AND EXECUTIVE REFORM IN AMERICAN SYSTEM; EXPERTS IN AMERICAN GOVERNMENT; STATE EXECUTIVE; STATE GOVERNMENT, CHARACTERISTICS OF; and BOARDS by name.

References: A. B. Hart, *Actual Gov.* (1908), § 69; C. A. Beard, *Am. Gov. and Politics* (1910), 499–508; J. H. Finley and J. F. Sanderson, *Am. Executive* (1908)' ch. xiii; F. N. Thorpe, *Federal and State Constitutions* (1909). T. N. HOOVER.

BOLIVIA. Bolivia, originally known as Alto Peru, was annexed to the viceroy of Buenos Aires until independence was declared in 1809. Independence was secured in 1825. The republic lies between latitude 10° 20′ and 23° 5′ south, and longitude 57° 30′ and 73° 47′ west (Greenwich), with an area of 708,195 square miles but has no sea coast. It has a population of 2,265,801, or over three per square mile, the least populated of American republics. The present constitution (1880) provides for a senate and chamber of deputies, the former consisting of 16 senators elected for six year terms, deputies for four years, partially renewed every two years, chosen directly by popular vote. The executive branch consists of a president and two vice-presidents, elected for four years by direct vote; the cabinet has six ministers: foreign affairs and public worship; finance and industry; government and promotion; justice and industry; war and colonization; agriculture and public instruction. The judiciary consists of a national supreme court of seven judges. There are eight political divisions called departments, governed by prefects appointed by the president, and further subdivisions with subprefects also appointed by him. The capital is La Paz and Sucre is also a capital, although executive and diplomatic residence is maintained at La Paz. State religion is Roman Catholic. **References:** J. L. Rodriguez, *Am. Constitutions* (1905), II, 411–452; Pan-American Union, *Bulletin* (monthly).

A. H.

BOLTERS. Members of a political party who assert their independence of party authority, by seceding from a party convention, or by refusing to support the ticket nominated or the platform adopted by the regular party organization, used extensively during the campaign of 1884 to indicate the disaffected Republicans allied, for the time, with the Democrats. See MUGWUMPS. O. C. H.

BONAPARTE, CHARLES JOSEPH. Charles Joseph Bonaparte (1851–) was born at Baltimore, June 9, 1851. In 1874 he was admitted to the bar. A Republican in politics, his radical independence of speech and action, together with his zealous advocacy of civil service reform, early gave him national prominence. He was for many years chairman of the council of the National Civil Service Reform League, and was one of the founders of the National Municipal League. From 1902 to 1904 he was a member of the United States Board of Indian Commissioners, and in the latter year the only Republican presidential elector from Maryland. In July, 1905, he was appointed Secretary of the Navy, in which position he was active in promoting the reorganization and expansion of the service. He resigned in December, 1906, to become Attorney-General. His conduct of this office, though energetic and industrious, was not distinguished, and his attempt to prosecute trusts, as an important part of President Roosevelt's program, did not have immediately important consequences. He retired from office March 5, 1909. See ATTORNEY GENERAL. **Reference:** J. H. Latané, *Am. as a World Power* (1907). W. MACD.

BONDED WAREHOUSES. A bonded warehouse is a warehouse established by the state or by private enterprise in which goods, liable to duty, are lodged under bond until the duty upon them has been paid. The statutes provide for three kinds: (1) public warehouses, the Secretary of the Treasury being authorized to lease such as he deems necessary; (2) private warehouses, used solely for the purpose of storing exclusively the owner's merchandise, the

merchandise stored therein being under the joint custody of the owner and an officer of the customs; (3) general warehouses, used by two or more merchants or importers, the owner, occupant or lessee thereof entering into a bond, exonerating and holding harmless the United States and its officers from, or on account of, any risk, loss or expense of any kind or description connected with or arising from the deposit or keeping of the merchandise in the warehouses. Any merchandise may be deposited in bonded warehouses save perishables and explosives. Merchandise deposited in bond may at any time within three years be withdrawn for consumption upon the payment of all duties and charges thereon, or may be withdrawn for exportation upon the payment of all storage and charges. The bonded warehouse system expedites the administration of customs duties and is of great value to all importers. See TARIFF ADMINISTRATION.

CLYDE L. KING.

BONDING OF PUBLIC OFFICERS. Either the constitution or the statutes of all the states require that persons elected or appointed to public office, or to certain specified offices shall, before entering upon the discharge of their duties, give a bond for the faithful performance of their duties, the same to be approved by certain designated authorities. In the case of officers entrusted with the collection or custody of public funds or other public property, bonds are always required as a means of protecting the state against loss through embezzlement, defalcation, or misappropriation. In the case of local officers, the board of county commissioners, the city council, or similar authorities are generally empowered to fix the amount of the bond and to approve the same. The law very frequently requires or authorizes new or additional bonds to be filed where, in the judgment of the authority or authorities empowered to approve the same, the existing bond is insufficient to insure the faithful discharge of duty or the protection of the state against possible loss. J. W. G.

BONDS. Governments, like corporations, when obliged to borrow money, do so through the sale of bonds. These vary as to time of maturity, rate of interest, and pledge of a sinking fund. All governmental bonds in the United States are issued for definite terms, as contrasted with the indefinite terms of maturity of English consols and French *rentes*. Rates of interest on public securities vary from 2 per cent to 10 per cent according to the credit of the issuing government. Bonds are usually issued in one of two forms—registered, and coupon. Federal coupon bonds are convertible into registered bonds of the same loan, but the registered bonds cannot be changed into coupons. Bonds are often secured by a pledge to set aside a sinking fund each year for ultimate redemption. In recent years some states and cities have issued serial bonds.

Federal bonds have an artificial price owing to their use as a basis for national bank circulation. This is true of some state bonds, where state legislation requires that insurance companies hold a certain reserve, for protection of policy-holders, in state securities. Trust and sinking funds often create an artificial demand for state bonds. Many state bonds are exempt from taxation. The value of county and municipal bonds is affected by limitations which may be placed upon the taxing power of the county or city, by the purpose of issue, and by technical conformity to legal requirements in the recital of conditions.

Partitions and annexations making new governmental boundaries create special problems in the treatment of local bonds. For example, the bonds of the old city of Brooklyn are a lien on the property of that section prior to the bonds of Greater New York. In some of the New England states municipal bonds are supported by a mortgage security on the property of the inhabitants, as well as by the taxing-power; and in all parts of the country waterworks bonds are secured by the specific property. In eight states municipal bonds issued since the passage of an exempting act, are tax free.

See BONDS, COUPON; BONDS, REGISTERED; DEBT, PUBLIC, ADMINISTRATION OF; SINKING FUNDS.

Reference: L. Chamberlain, *Principles of Bond Investment* (1911), 115–251.

DAVIS R. DEWEY.

BONDS, COUPON. Bonds to which are attached slips to be detached for interest payments as they accrue. Such coupons are generally made payable to bearer, and are therefore readily collectible through banks. See BONDS; BONDS, REGISTERED; DEBT, PUBLIC, PRINCIPLES OF. Reference: L. Chamberlain, *Principles of Bond Investment* (1911), 325.

D. R. D.

BONDS, REGISTERED. Bonds on which the name of the owner is inserted as also on a register in the Treasury Department. These are to be distinguished from coupon bonds where payment is made to the person presenting the coupon. Each has its advantages; the holder of a registered bond cannot suffer loss if the security be stolen; but on the other hand a coupon bond, being negotiable, often is more serviceable. See BONDS; BONDS, COUPON.

D. R. D.

BONUS BILL. The Bank of the United States paid the Government a bonus of $1,500,000 for its second charter (1816). The Bonus Bill proposed to set apart, for internal improvements, this fund and the annual dividends upon the $7,000,000 of the bank's stock owned

by the United States. No works were to be begun in any state until its consent had been given. The bill was carried through Congress by John C. Calhoun mainly with the votes of the middle and western states. President Madison vetoed the bill because Congress had neither the express nor the implied constitutional power to do what the bill proposed. See BANK OF U. S., SECOND; INTERNAL IMPROVEMENTS; VETO. References: J. D. Richardson, *Messages and Papers of the Presidents* (1896), I, 584; G. S. Callender, *Economic Hist. of the U. S.* (1909), 392. E. R. JOHNSON.

BOODLE. A current slang term signifying money used for corrupt purposes in political affairs; most commonly applied to money used corruptly in elections for purposes of bribery A. C. McL.

BOOKKEEPING AND WARRANTS, DIVISION OF. The Division of Bookkeeping and Warrants is one of the divisions of the United States Treasury Department (*see*), and performs the bulk of the Treasury bookkeeping. It deals with payments by warrants, and the covering of government receipts into the Treasury, and the bookkeeping of receipts, appropriations and disbursements, and the compilation of the various estimates and the digest of appropriations into such an approach to a budget as is possible under the present fiscal legislation. Reference: Secretary of the Treasury, *Annual Reports.* A. N. H.

BOOKMAKING. See GAMBLING; RACE-TRACK GAMBLING.

BORDER RUFFIANS. A term originally applied by the free state settlers to the bands from Missouri who came into Kansas in 1854–1855 to overawe free state settlers and to vote at elections for the purpose of making Kansas a slave state. See ANTI-LECOMPTON DEMOCRATS; KANSAS; KANSAS STRUGGLE.

O. C. H.

BORDER STATES. The border states were the states on the border between the free North and the pro-slavery South. They were slave states, but in each, the white population was much larger, and was increasing much more rapidly than the slave. Socially, these states were more like the South; commercially, their interests were more closely connected with the North. In the same state were Unionists against Secessionists, and among the Unionists were those for and against slavery. Virginia was the only one to join the Confederacy. The north-western counties remained loyal, and in June, 1863, were admitted to the Union as the separate state of West Virginia. Kentucky and Maryland took a stand against secession, but at the same time tried to remain neutral. President Lincoln, by his tact, did much to hold these states in the Union. Missouri's governor, Jackson, was the leader of the secession forces in that state. Blair and Lyon opposed him. The struggle was lost by Jackson, and he was deposed. During the war the slavery question was of great importance in the loyal border states. They favored the Crittenden Resolutions, and opposed the enlistment of negro troops, and the various acts of Congress relative to freeing slaves. President Lincoln, in his message of March 6, 1862, proposed his policy of compensated emancipation of the slaves in the loyal border states, believing it would bring an early end to the war, by removing all hope that the Confederates might have of adding the states to the Confederacy. The states rejected Lincoln's plan. In 1862, the border states sent Republican members to Congress, thus saving the control for that party. Guerilla warfare, in addition to regular military campaigns, was carried on. After the war, the military control over the border states was a disagreeable condition of reconstruction times. References: J. F. Rhodes, *Hist. of U. S.* (1895), III, ch. xv; J. T. Morse, *Abraham Lincoln* (1899), I, ch. viii, II, ch. i; A. B. Hart, *Slavery and Abolition* (1907), 65; F. E. Chadwick, *Causes of Civil War* (1907).

T. N. HOOVER.

BOROUGH. In England, boroughs constitute the most important class of urban municipal corporations. During the colonial period a number of boroughs were organized in New Jersey and Pennsylvania; and the term continues to be used in these states and in Connecticut for the smaller municipalities, corresponding to villages in other states. In Connecticut, boroughs are organized by special legislative act. In New Jersey and Pennsylvania boroughs are more numerous and are organized under general laws. The principal authority is a small board or council. In Connecticut, the chief borough officer is called the warden; in Pennsylvania, the chief burgess. The borough governments supplement the town government, and deal with the special needs of the more compactly built districts, such as fire protection, police, sidewalks and street paving.

See BOROUGH COUNCIL IN GREAT BRITAIN; BY-LAWS OF RURAL ORGANIZATIONS; COUNTY GOVERNMENT; MUNICIPAL GOVERNMENT; TOWNS AND TOWNSHIPS; VILLAGES, INCORPORATED. References: J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906), ch. xi; W. P. Holcomb, *Pennsylvania Boroughs* (1886). JOHN A. FAIRLIE.

BOROUGH COUNCIL IN ENGLAND. The English borough is an urban area which has been granted a charter of incorporation under the provisions of the Municipal Corporations Act of 1882. There are about 350 boroughs in

England and Wales, and they range in size from Hodon with about a thousand population to Liverpool with nearly a million. A score or more of the boroughs are called county boroughs, which means that they are virtually administrative counties as well as boroughs; the remainder are called municipal boroughs and as such are subject in some degree to the supervision of the county council.

The governing organ of the borough—whether county or municipal—is the borough council. This body is composed of a mayor, aldermen and councillors, all sitting together. The councillors, who number from nine to seventy-two according to the size and importance of the city, are elected by the voters, usually from wards, for a three-year term, and one-third retire annually. The voters are the occupants of rate-paying property who reside in the borough or within seven miles of it. Unmarried women and widows, if thus qualified, are included. The councillors, in turn, select aldermen to the extent of one-third of their own number, and this they may do either from within or without their own ranks. These aldermen have a six-year term; but they sit with the councillors and have no special privileges at council meetings. The councillors and aldermen together select a mayor to serve one year, this selection being made usually but not necessarily from among their own number. All serve without remuneration, although the mayor may be granted an allowance for expenses.

The borough council as a body exercises all legislative and administrative powers vested in the municipality. It makes practically all municipal appointments; conducts either directly or through its standing committees all the city departments such as police, public works, streets, parks, schools, lighting, water, sewerage, and so on. Under the provisions of various general laws it may own and operate public utilities. It makes by-laws on matters of local regulation. It levies an annual borough rate or tax; and under well-defined restrictions has power to borrow money on the credit of the borough.

See BOROUGH; COUNTY COUNCIL IN GREAT BRITAIN; COUNTY GOVERNMENT; LOCAL GOVERNMENT IN GREAT BRITAIN; LONDON COUNTY COUNCIL; TOWN GOVERNMENT.

References: J. Redlich, and F. W. Hirst, *Local Government in England* (1903), II, 219–418; A. Lawrence Lowell, *Government of England* (1908), II, 144–201; W. B. Munro, *Government of European Cities* (1909), 209–379.

W. B. MUNRO.

BOROUGH PRESIDENT. The city of New York, by the charter of 1897, is divided into five boroughs or administrative districts—*viz.*, Manhattan, the Bronx, Brooklyn, Richmond and Queens. In each borough there is elected by popular vote a borough president who holds office for four years. The borough president is supposed to see after the interests of his borough and has considerable administrative authority. He appoints and can remove at pleasure a commissioner of public works for his borough, to represent him in all matters relating to streets, sewers, public buildings, etc. Within the borough, the president has control of grading, paving and repairing streets and highways; of laying surface railroad tracks; of the construction and maintenance of bridges and tunnels; of all matters pertaining to sewers and drainage, etc. All contracts relating to public work in his borough are prepared by him or under his authority. In the boroughs of Richmond and Queens, the president has additional powers, including control of street cleaning and the removal of ashes, garbage, and rubbish. He is also a member and the chairman of the several local improvement boards of his borough. The borough presidents are also members of the Board of Estimate and Apportionment, which is the real governing body of the city, each casting one vote as against the plural votes of the other members. Two borough presidents have been charged before the governor with malversation in office, and one was removed. See MAYOR AND EXECUTIVE POWER IN CITIES; NEW YORK CITY. References: New York City, *Charter* (1901); D. F. Wilcox, *Great Cities in America* (1910), ch. iii; J. A. Fairlie, *Municipal Administration* (1906), 403.

H. E. F.

BORROWING MONEY, CONSTITUTIONAL SENSE. Under the Constitution, Congress is empowered "to borrow money on the credit of the United States" (Art. I, Sec. viii, ¶ 2). This includes borrowing by the issue of bonds or by issue of any other obligations of indebtedness, as treasury notes. All these obligations by judicial interpretation are exempt from state taxation. At the close of the Civil War, in order to reassure creditors rather than to define any new principle, the Fourteenth Amendment to the Constitution pledged that the validity of the public debt, including that which was incurred for payment of pensions and bounties, shall not be questioned. The power to borrow money has heen given liberal interpretation by the Supreme Court; for example, the establishment of the Second United States Bank (*see*) was justified in considerable part by the borrowing power (*see* MCCULLOCH *vs.* MARYLAND). The states have the right to borrow money in such manner as they deem proper, save they cannot borrow by issue of bills of credit. See DEBT LIMITS IN STATE AND LOCAL GOVERNMENTS; DEBT, PUBLIC, PRINCIPLES OF; DEBT, PUBLIC, REPUDIATION OF; ELASTIC CLAUSE; FOURTEENTH AMENDMENT. References: E. McClain, *Const. Law in the U. S.* (2d ed., 1910), 145–147; T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), 64–66.

D. R. D.

BOSS, AND BOSS SYSTEM OF PARTY ORGANIZATION

Definition.—A political "boss" is a political leader gone wrong. The true leader makes an open appeal to the entire constituency in the interest of the public; the boss controls the constituency by secret methods for private gain or special interests. An absolute monarch does not lead his people, he governs them. In a democracy some one must lead, and the people who are led must in some way find their leaders. This is one of the most difficult tasks of human endeavor. The dual-party system of government, as it exists in England and America, is an agency called into existence and maintained to assist the people in finding their leaders and choosing their rulers.

Cabinet Leadership.—Under the English cabinet system it is practically impossible for the political leader to become a political boss. The Prime Minister and the leader of the opposing party hold their positions by virtue of excelling other members of their parties in the elaboration of governmental policies and commending them to the approval of the voters. In like manner those who are associated with the Prime Minister in the Cabinet, each and all, hold their positions through their ability to lead in tbe various lines of party government. Dominating characters do appear in cabinet government. Through masterful leadership a statesman may become necessary to the success of his party. Mr. Gladstone tried many times to vacate the office of leader, but was held to the post by apparent party necessity until stricken with mortal disease. For a time Lord Beaconsfield appeared equally necessary to the successful leadership of the Conservative party. Yet these men could not become party bosses, because all their powers of mind were occupied in the formulation of competing policies of statesmanship and in commending these policies to the approval of the voters. There was, besides, no party machinery to manipulate.

Early American Leadership.—In the American party system also there was little opportunity for the development of the political boss until after the Civil War. When the Constitution was adopted the wisest statesmen had no clear conception of the sort of government which would follow. The people found their government through great political organizations not dreamed of by the makers of the Constitution. Through these they attained self-consciousness as a nation, and to tbis end a vast and intricate party machinery furnishing party offices to a large proportion of the voters seemed needful. During the early years of tbe fully developed convention system conspicuous party leaders appeared, but no party boss. In the Whig party, Clay, Adams and Webster were typical leaders; in the Democratic party, Jackson, Calhoun and Douglas. All these men led because of the policies which they formulated and their success in commending them to the approval of the people. Such is not the way of the political boss. Actual policies openly formulated dominated politics until the Civil War.

Origin of the Boss System.—When the war was over the people had found their government. National consciousness had been fully attained. By means of the railway, the telegraph, and the newspaper all sections were brought into constant communication. The earlier uses of the extensive party machinery had become obsolete; yet the machinery remained and was capable of being used for unworthy ends. Perhaps no political leader more fittingly represents the transition from the statesman to the boss than does Roscoe Conkling. As a member of the House of Representatives from 1859 to 1867 Mr. Conkling was known as a statesman of great promise. This reputation he retained while afterwards a member of the Senate; but the country observed that his time and attention became more and more occupied with the running of the Republican party machine in New York State. Great questions of public policy were being fought out in Congress and before the country while the leading Senator from New York took little part in the contest. An occasional spectacular speech which his admiring followers were accustomed to call "the greatest effort of his life" was looked upon by those who did not admire as "playing to the galleries." Statesmanship had become a secondary matter in the management of the Republican machine. Conkling was not accused of any sort of gross political corruption. His admirers and devoted followers were in general high-minded and patriotic citizens. They were stalwart party devotees, to whom the party organization was still a symbol of statesmanship and patriotism. They did not realize that the organization was coming under the control of conspirators in close alliance with crime and predatory wealth; that thus patriotism was being undermined and statesmanship made impossible. To ensure continued control over his party machine Conkling led the Stalwarts in a memorable conflict in the national convention of 1880. Failing to control this he was driven from public life.

Conkling's career typifies the first stage of degeneracy in party leadership. The leader had not become a boss in the full sense of the term, though he had taken part in the creation of a party machine whose efficiency requires a boss. Had Conkling himself come into politics

through the operation of such a machine, he never would have gained any standing as a statesman, neither could he have escaped credit for the grosser forms of corruption. In its lower offices the machine itself was corrupt and corrupting, and any one growing up in the midst of its operations and consenting to become its beneficiary and leader must either attempt to destroy it or partake of its nature. The successor to Mr. Conkling has had by necessity the full reputation of a party boss.

The Corporation and the Boss.—The boss system in party government is closely related to the corresponding system in the management of the modern business corporation. So long as the two great parties are kept independent, are nearly equally balanced and are competing for the support of the voters on public questions, it is not easy for any system of organized corruption or abuse to gain ascendency in the government. The early banking corporations were often made the tools for the crudest forms of public robbery, yet through open party debate these abuses were exposed and corrected. But when the nation became divided over the question of saving or destroying the Union, the party system went to pieces. For twenty years, beginning about 1850, no national party system prevailed. During this period there grew up in the United States a new industrial system. While the people were occupied in saving one government a new government appeared which they did not understand. They became subject to the combination of monopolistic bodies built up around the newly created railway system.

When the banks, before the war, robbed the public by issuing "wild cat" money the crime was committed by the stockholders, who constituted the company. In the new form of corporate organization the ordinary stockholders were shut out from any share in the management of the business; an inner circle of corporation officers conducted the business and pillaged the holders of stocks and bonds. Corporate power was manipulated to build up private fortunes, whose sources were the trust funds from stockholders and bondholders and the tribute levied upon the public through the secret monopolistic control of great business operations. The public has gradually been trained to regard the corporation as consisting not of shareholders, not even of officers elected by the shareholders, but of one man. In the popular imagination the railway king owns the business and commands much the same sort of tribute that other successful kings are wont to receive.

The business corporation is a creation of law. Without the continued coöperation and support of the government it would have no standing, and the government is responsible for all its acts. At every stage of its development the new business had relied upon the government. The evil practices which grew up within it made it necessary to bribe legislators, control administrative officers and gain predominant influence over lawyers and judges. Such proceedings require the closest secrecy. Not only are there criminal secrets to be guarded, but there are also legitimate business secrets. For these various reasons the one man power gained an early ascendency. Efficiency in management also was promoted by centralizing the control in the hands of one great captain of industry. By the close of the Civil War the boss system of corporate management was already well established. To guard these newly created industrial interests the corporations had need of a similar organization to furnish them with control of the government. Unlimited sums of money were available for the support of such a machine. The spoils system for the distribution of federal, state and city offices furnished the germ for its evolution.

Pennsylvania as an Example.—While in the state of New York is seen a clear example of the transition from statesmanship to bossism, in Pennsylvania we have the standard illustration of the working out of the entire new system. This state was the home of the great coal and iron industries. Here was first developed an extended railway system in close combination with mining and manufacturing interests. Pennsylvania furnished the first railway king. The men who were active in forming corporation monopolies in the state took a leading part in the organization of the state Republican party. Its primary object was to save the Union and not to guard the interests of corporations, yet the form of organization fitted it for such a purpose. In Pennsylvania, Republican party leaders were from the first bosses rather than statesmen. They manipulated corporation machinery to shut out shareholders from its business management and they manipulated party machinery to shut out the rank and file of party members from political control.

Statesman and Boss.—In theory it is easy enough to distinguish the statesman from the political boss, but in practice this is often most difficult. The successful boss performs many of the acts of a true statesman. While the party machine is being used to protect a favored few in acts of public robbery the same organization and the same leader are saving the Union, paying off the public debt and maintaining the honor of the nation. The statesman and the boss work together, using the same organization for common ends. The effective statesman is likely to be called a boss, and the boss appears to some as a patriotic statesman. The convention system of party government with its multitude of committees and secret agents furnishes great facilities for deceiving the public and obscuring the distinction between good and bad leaders. The statesman has need of the organization. The organization requires money to meet legitimate

expenses, and there is no clearly defined line between legitimate and illegitimate expenses. The party appears to work in sections; one section promoting free and open debate, enlightening the public on public questions; the other raising false issues, deceiving the people in the interest of predatory wealth. But it is the same organization doing both of these things at the same time. To the public the difference is not clear.

An illustration may throw some light on this subject. In 1896 the two great parties joined issue over the question of adopting the gold standard of values. The issue was clear and distinct. An enlightened debate followed and settled the question. On each side enormous financial interests were involved. The owners of silver mines supported one side, the owners of credits supported the other. Large sums of money were used, some of it corruptly used. Yet in each party statesman and boss worked together, and money was not used to deceive the public by raising false issues.

The tariff question presents a situation radically different. Coincident with the Civil War one political party became responsible for a system of duties on imports which could never endure the strain of discriminating public debate. Behind the tariff wall monopolistic corporate wealth became intrenched. In each of the two great parties franchise interests and protected interests became influential or controlling. On the tariff question there has been no fair and open debate. The dominant party has found it convenient to treat the protective tariff as a sacred symbol of patriotism and prosperity. He who does not approve it is branded as an enemy of his country in league with British free traders to ruin American industries. The issue has been obscured by the variety of meanings attached to the words "protection," "free trade" and "a tariff for revenue only." The first really enlightening debate on the tariff occurred within the ranks of the Republican party while the McKinley bill was before the country. Its effect was to transfer the government to the Democrats. Then the country learned with astonishment that protected interests were entrenched in each of the parties, that the difference between the parties seemed to be in the use of a few confusing and distracting phrases. On this subject the party system has for forty years been an effective agency for deceiving the people and perpetuating abuses, but all the time statesmen in each party have honestly sought to enlighten the people, and a few party manipulators have definitely intended to deceive. The latter have been so successful that for the most part statesman and boss are made to appear very much alike. Only in a few states has the machine or boss system been so fully developed as to gain full public recognition.

City Boss.—That form of party organization which is adapted to the great city would seem to facilitate the recognition of the distinction between the good and the bad leader. Here the boss is often in close allianee with the saloon, the brothel and the gambling den. He employs "ward heelers" who commit all sorts of crimes against election laws. Nevertheless the city boss has in him the elements of a continued success; he is wont to exhibit many good qualities. He is a good fellow with generous impulses. As a friend to the poor, he enters into their joys and sorrows and is present at weddings and funerals. If sons or daughters go astray he returns them to the family. Through his organization he finds employment for the unemployed. Many good deeds are mingled with the bad. The successful boss is also especially efficient in performing selected portions of his public duties. He is an agreeable man to do business with. In the city as in the state at large it is the mingling of the good and bad qualities which accounts for the long continuance of the close alliance between crime and public office. There seems to be no hope of deliverance from this alliance except by radical ehanges in party organization. The successful boss makes use of both of the party machines as a most reliable means of deceiving the public and guarding the special interests which he is hired to guard.

See Corruption, Political; Machine, Political; Party Government; Party Leadership; Party Organization in Pennsylvania; Organization; Spoils System; Tammany.

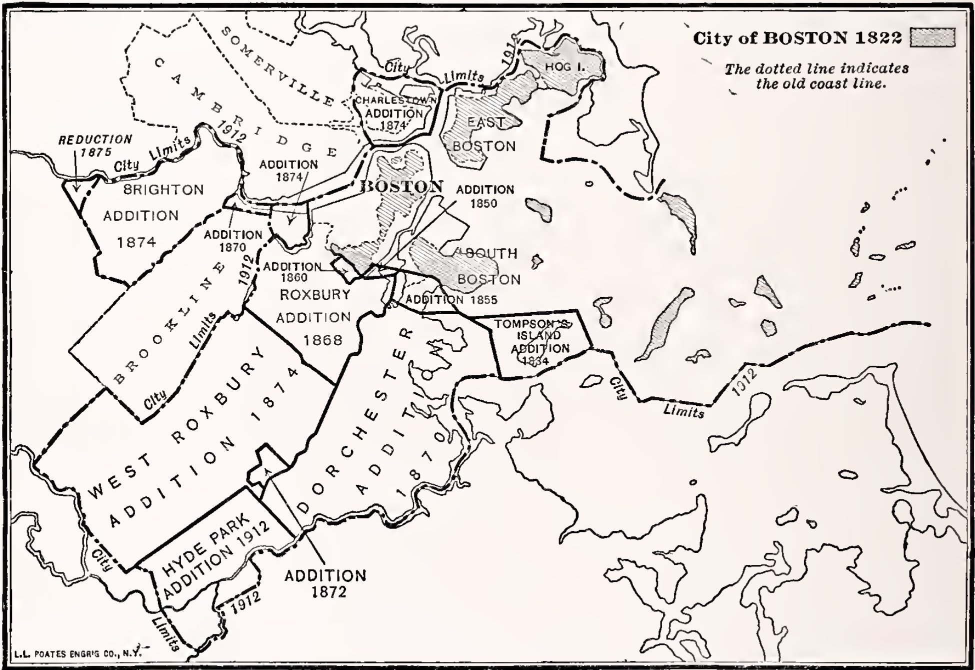
References: J. A. Woodburn, *Pol. Parties and Party Problems* (1903), ch. xvii; M. Ostrogorski, *Democracy and Pol. Parties* (1902), II, 191–204, 401 *et seq.*; J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, 111–135, 168–175; C. A. Beard, *Readings in Am. Government and Politics* (1911), 125–130, 567–572; C. L. Jones, *Readings on Parties and Elections* (1912), 327–334; T. Roosevelt, "Machine Politics in New York City" in his *American Ideals* (1897); T. N. Carver (compiler) *Sociology and Social Progress* (1905), ch. xxxv; J. Hamilton, *Dethronement of the City Boss* (1910); F. W. Dallinger, *Nominations for Elective Office* (1892); "Defense of the Political Boss" in *Independent*, LV (1903), 1013–17; L. F. C. Garvin, "The State Bread Boss" in *Century*, XLIV (1903), 310–314; "Senator Platt's Autobiography" in *McClure's Magazine*, XXXV (1910), 115–129 etc.; F. C. Lowell, "The Am. Boss" in *Atlantic Monthly*, LXXXVI (1900), 289–299; J. Addams, "Ethical Survivals in Municipal Corruption" in *Int. Jour. of Ethics*, VIII (1898), 273–291.

Jesse Macy.

BOSTON. Early History.—Boston is the capital of Massachusetts (*see*) and the metropolis of New England, situated on Massachusetts Bay at the mouth of the Charles

River. Its area is 27,300 square acres, and its population in 1910 was 670,585. The history of the city dates from about 1630 when groups of settlers, under the auspices of the Company of Massachusetts Bay, established themselves at various points which are now within the municipal limits of Boston. Boston organized a town government within a very few years after the first settlers came, with the annual town meeting serving all purposes at the outset. Selectmen and other officers were chosen as the town developed. The population grew rapidly, and a movement for a borough charter began as early as 1650. The proposal was broached again from time to time throughout the colonial period but invariably met with much opposition particularly because the organization of a borough government seemed likely to take away from the place some of the local autonomy and freedom which it enjoyed as a town.

In 1822, after several abortive attempts, a charter was drafted and accepted by the voters of the town. The population of Boston was then slightly in excess of 40,000. The charter created a government consisting of a mayor, a board of eight aldermen elected at large, and a common council of forty-eight members—four elected by the voters of each of the twelve wards into which the city was divided. The mayor was given only nominal powers, and all legislative and administrative authority was vested either in the board of aldermen or in the two councils acting concurrently. The actual work of administration, under this charter, was performed by standing committees made up of members from the two branches of the council. The first important amendments came in 1854 when the powers of the mayor were increased by giving him a qualified veto power over the council's acts; but until 1885 the council continued to be the dominant factor in the affairs of the municipality.



Boundaries of the City of Boston, Showing Territorial Changes.

Charter of 1885.—In 1885 the Boston charter was amended again in several important respects, especially in the direction of further increasing the mayor's powers. All executive authority hitherto vested in the council was now transferred to him, including the right to appoint the heads of municipal departments and to approve all contracts amounting to more than $2000. The changes of 1885 gave the city what was virtually a new charter, and shifted the balance of power from the council to the mayor. Other changes were made from time to time during the ensuing twenty years, but no thorough revision of the city's charter was undertaken until 1909 when the elaborate investigations of the Boston Finance Commission disclosed the unsatisfactory way in which the affairs of the municipality—especially the financial affairs—were being administered under the existing arrangements.

Charter of 1909.—The charter amendments of 1909 embodied a complete reorganization. The mayor's term of office was extended from two to four years. The board of aldermen of

thirteen members and the common council of seventy-five members were both abolished, and in their place a city council of nine members was established. Under the present arrangements the mayor is elected by the voters on the second Tuesday of January in every fourth year. Candidates are nominated by petitions, which must be signed by not fewer than 5,000 qualified voters of the city, and the election takes place by a ballot which bears no party designations. Although the mayor is elected for a four-year term, he may be "recalled" at the end of two years; but only in case a majority of the registered voters of the city declare against him at the polls. This means, as a matter of practice, that approximately two-thirds of the polled votes must be cast against a mayor in order to secure his recall. The salary of the mayor is $10,000. Members of the city council are elected by the voters of the city at large. Nominations of candidates for election to the city council are also made by petitions bearing the signatures of at least 5,000 voters; the ballots bear no party designations; and the order of names upon the ballot is determined by lot. Councillors are elected for a three-year term, and one-third of their number retire annually. They are paid $1,500 per annum.

By the charter amendments of 1909 large powers were vested in the mayor. He appoints all heads of departments and all administrative boards (except a few whose appointment is otherwise provided for), but such appointments are not valid until confirmed by the civil service commission. The latter is a state board of three members appointed by the governor. All recommendations for the expenditure of money must be initiated by the mayor, and while the council may reduce or omit any item in the list of appropriations which the mayor sends to it, it may not insert or increase any item. The powers of the council, on the other hand, include the making of city ordinances, the consideration and approval of appropriations, the authorization of loans, and the sanctioning of all awards of contracts extending over one year. All these powers are subject to the mayor's veto.

In addition to the mayor and council Boston has a finance commission and a school committee composed of five members each. The members of the former body are appointed by the governor of the state, and their duty is to watch the conduct of city administration in the interest of the taxpayers. The members of the school committee are elected by the voters of the city at large, and this committee exercises the usual powers of supervision in the city's system of public education. The police commissioner and the excise commission of three members which controls the licensing system are appointed by the governor.

Boston is the center of a metropolitan district which contains thirty-nine other cities and towns with a total population larger than that of the metropolis itself. Certain services in this wider district have been put in charge of metropolitan commissions appointed by the governor.

See MUNICIPAL GOVERNMENT; MAYOR.

References: N. Matthews, Jr., *Municipal Hist. of Boston* (1895); J. M. Babson, Ed., *The Consolidated Statutes Relating to the City of Boston* (1908); Boston Finance Commission, *Reports* (1909); D. F. Wilcox, *The Government of Great Am. Cities* (1910), esp. ch. vii; J. Winsor, Ed., *Memorial Hist. of Boston* (1880–1882). WILLIAM BENNETT MUNRO.

BOSTON MASSACRE. An appellation given by the Boston "patriots" to the killing of four citizens in a collision on King's Street, Boston, March 5, 1770, between a crowd of citizens and the British soldiers in which the soldiers provoked by jeers and blows fired upon the threatening mob. See REVOLUTION, AMERICAN, CAUSES OF. O. C. H.

BOSTON PORT BILL. A bill passed by the British Parliament, March, 1774, closing the port of Boston after June 1, 1774, to remain in force until the town compensated the East India Company for the tea destroyed by the "Boston Tea Party." See BOSTON TEA PARTY; REVOLUTION, AMERICAN, CAUSES OF. O. C. H.

BOSTON TEA PARTY. After the passage of the Tea Act, ships laden with East India Company tea came into a number of the American ports, and were treated ignominously at several places. In Boston, after a peaceful attempt to prevent the landing of the tea had failed, a band of radical opponents disguised as Indians went aboard the ship and threw the tea into the harbor. Next morning it lay like seaweed on Dorchester beach. The English Government tried to make Boston pay for the tea, and measures intended to punish that city hastened open rebellion. See REVOLUTION, AMERICAN, CAUSES OF. References: G. Bancroft, *Hist. of U. S.* (author's last revision, 1888) III, ch. xxxiv. C. H. VAN T.

BOULEVARD. Originally, in French, a fortification, especially a line of fortifications enclosing a town; hence applied to the broad streets and chains of ornamental grounds frequently laid out upon the site of such fortifications when abandoned for military purposes; hence to any street of exceptional width and dignity, especially when planted with several rows of trees or accompanied by other decorative features, or to any elongated public promenade or pleasure ground. In America often used synonymously with parkway, although the latter is properly limited to an elongated park or to a way accompanied by a considerable extent of park land. See CITY PLANNING; PARKS AND BOULEVARDS; ROADS; STREETS. F. L. O.

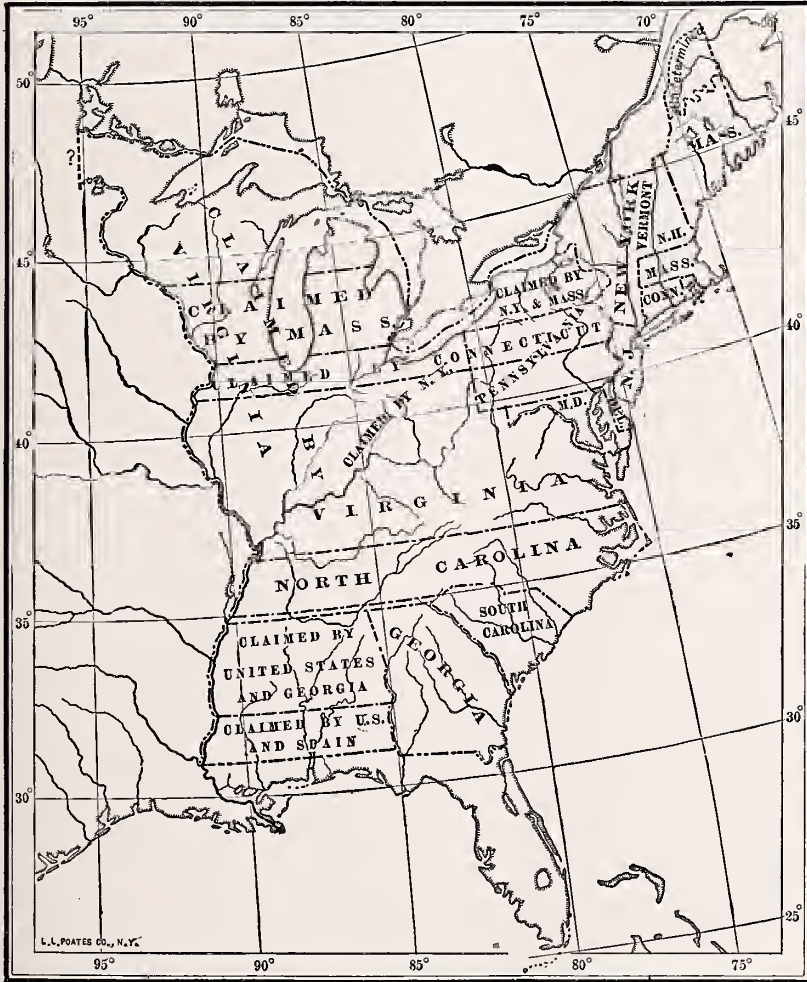
BOUNDARIES OF THE UNITED STATES, EXTERIOR

Scope of the Discussion.—Under the insular decisions of 1900 the Supreme Court of the United States practically laid down the doctrine that there were three different areas to which the term United States might be applied: (1) The combined area of the states in the Union; (2) the states plus the territories which had been incorporated into the Union by Congress; (3) the states and the incorporated territories plus the dependencies. The boundaries, therefore, of what might be called the empire of the United States surround islands in the Atlantic and Pacific oceans, and a tract on the isthmus between North and South America, as well as the so-called continental United States in the middle of North America, and Alaska on the northwestern portion of that continent.

Sea Boundaries.—The usual principle of international law is that jurisdiction extends three nautical miles from the low water mark out to sea; and this applies on all the sea fronts of the continental masses of the United States, and to all the islands. The eastern boundary of the United States also includes everything within a line drawn three miles outward, parallel with lines from Cape May to Cape Henlopen across Delaware Bay, and from Cape Charles to Cape Henry across Chesapeake Bay. The claim to the waters thus included as part of the United States although the mouths of the two bays are wider than six

Boundaries of the British Colonies in 1775

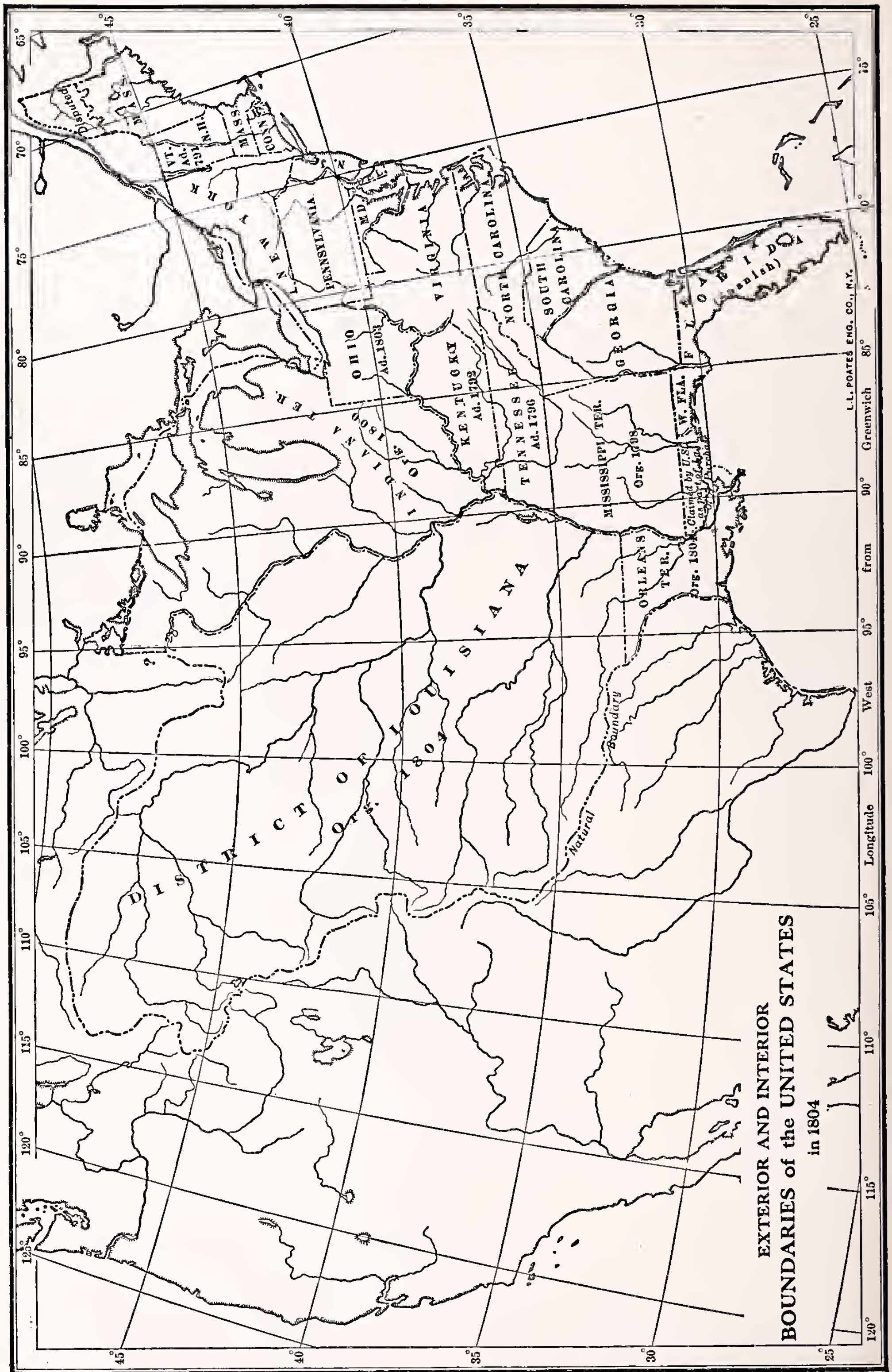
miles, was first clearly stated in 1793 and has never since been disputed (*see* France, Diplomatic Relations with). The United States, however, has been slow to recognize this principle of closed bays in the Bay of Fundy and other Canadian waters (*see* British North America, Diplomatic Relations with). Inasmuch as Long Island Sound opens out to sea by channels nowhere more than three miles between islands, its possession by the United States has not been denied. In the fur seal controversy (*see*) the United States asserted from 1886 to the arbitral finding of 1893, that the eastern part of Behring Sea was a closed sea, and that, therefore, vessels of other nations might be seized either within or without the three mile limit.



Exterior and Interior Boundaries of the United States in 1782

Lake and River Boundaries.—Lakes enclosed by the territory of the United States are, of course entirely within its jurisdiction, but lakes and rivers forming a part of the boundary line between the United States and foreign countries, are subject to joint rights of the two parties.

The Great Lakes and the St. Lawrence River, to the point where the boundary turns eastward on the 45th parallel are divided by a line which, in general, follows the thalweg, except that it is intended to be in the "middle" of the Lakes. Actually the boundaries have been laid down by a series of conventions and commissioners' findings, so that Point-au-Pelée Island in Lake Erie is Canadian, and Isle Royale in Lake Superior is American. The islands in the rivers from the Lake of the Woods to the divide and thence downward through the Pigeon River have been separated in the same way by mutual agreement. All these dividing waters, however, are available in their whole breadth for navigation by the citizen or subjects of either power. September 4, 1890, Congress passed an act extending the criminal jurisdiction of the federal eourts over the Great Lakes and connecting waters, as far



EXTERIOR AND INTERIOR
BOUNDARIES of the UNITED STATES
in 1804

as the middle boundary line; and within that line the states have a right to legislate on fisheries. The United States has also obtained for its citizens a right to use the lower St. Lawrence below the boundary and its canals substantially on the same terms as Canadians.

On Rio Grande River and the short stretch of the Colorado, which is a boundary, there has been a similar division of the islands. Here the question has arisen whether a shift of the river bed carries the boundary with it. The principle has been established that it does not; that the line once fixed is permanent.

Island Boundaries.—The United States is the possessor of a multitude of islands both on the Atlantic and the Pacific side of its coasts. Nearby islands, including the Santa Barbara group, which is about 30 miles offshore and San Clemente which is 50 miles offshore, and the long stretch of the Aleutian Islands, and the St. Matthew, and Pribilof groups in Bering Sea, have come into the possession of the United States with the annexation of the adjacent coast line. From 1846 to 1871 there was a controversy over the San Juan Islands lying in Puget Sound. The Emperor of Germany, acting as arbitrator in 1872, assigned the disputed group to the United States. With this controversy was associated the question whether the termination of the line of the 49th parallel in Puget Sound was half way between the point where it first struck tide-water and the British coast on the west; or half way between Point Roberts on the west side of Boundary Bay and the western coast. The latter contention of the United States was upheld.

The exterior boundary of all the islands is the three marine league line measured out from low water; in one case, that of Bering Sea, the United States in 1886 laid formal claim to a stretch of water jurisdiction outside this three mile line; this claim was based on a construction of the Russian treaty of 1867; by which a western limit was laid down through Bering Straits southwestward. The claim of the United States to exclusive jurisdiction over all the sea to the east of this line as far as the mainland, and the Aleutian Islands to the southward was negatived by the Paris Arbitration Tribunal of 1893.

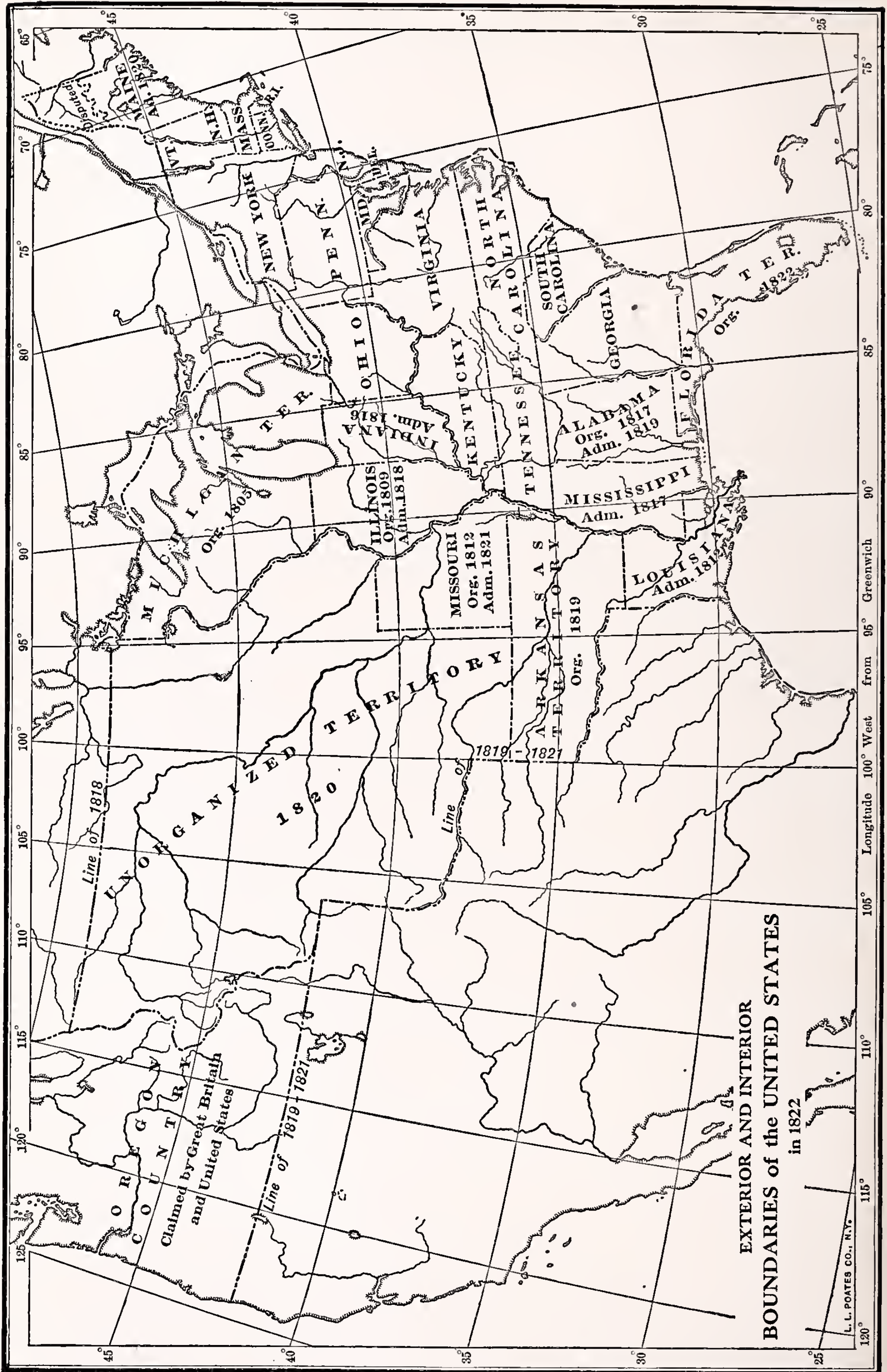
The boundaries of the Philippine Islands likewise extend three nautical miles out to sea from the low water mark. The entrance to Manila Bay is subdivided by islands nowhere more than six miles apart. The transfer of the Philippines to the United States by the Spanish treaty of 1899, lays down a series of geographical lines, all islands within which are transferred to the United States; but this does not confer jurisdiction outside the three mile line. It was later found that a small group of islands to the south had been cut off by this line, and by a treaty proclaimed in 1901, Spain ceded any islands of the Philippine archipelago which lay outside those geographical lines, particularly the islands of Cagayan Sulu and Sibutu. The Pacific islands carry with them the three mile line. By treaty with Germany and Great Britain, concluded December 2, 1899, the 171st meridian west of Greenwich became the dividing line between the claims of the territory of the United States eastward and the territory of Great Britain and Germany westward, in the Samoan group of islands; but again no jurisdiction outside the three mile limit is thereby conferred. The co-called Bird Reservation of the Hawaiian Islands includes some little rocky islands as far west as the 179th meridian west, a distance of nearly a thousand miles from the main Hawaiian group.

The United States possesses a great number of small islands in the Pacific, of which Guam was conquered in 1898, and formally ceded by the Spanish treaty of that year. Other islands of some significance are Midway, Wake, Baker, Howland, and Christmas. The United States also includes about fifty guano islands in the Pacific Ocean. By statute of August 18, 1856, provision was made for registry as a part of the United States for the time being of such islands when occupied by the United States. There are also some nine or ten guano islands in the Caribbean Sea, of which the principal one is Navassa Island.

Panama Canal Zone.—By treaty with the Republic of Panama November 18, 1903, the United States acquired "in perpetuity, the use, occupation and control of a zone of land, and land under water—extending to the distance of five miles on each side of the center line of the route of the canal," extending out to sea three marine miles at each end, not including the cities and harbors of Colon and Panama; but including in perpetuity, the use, occupation and control of other lands outside the zone necessary for canal purposes. This gives to the United States an eastern and western boundary line, together with as yet undetermined accessories.

With the exception of the clauses relating to three confining lines (in Bering Sea, round about the Philippines, and to the west of Tutuila) and the enclosed waters of Delaware and Chesapeake bays, the water boundaries of the United States and all its dependencies are simply the three mile limit measured seaward from low water mark. There has been one readjustment of water boundary by agreement. In a protocol of a conference between the American Minister in London and the British Foreign Secretary, dated Deeember 9, 1850, a rocky area known as the Horseshoe Reef, at the entrance of the Niagara River, was ceded to the United States as the site of a lighthouse.

Boundaries by Right of Occupation.—The title to the Guano Islands, small Pacific islands, and Tutuila, is based on original occupation of territory not possessed by any other civilized country. The only land area to which


EXTERIOR AND INTERIOR
BOUNDARIES of the UNITED STATES
in 1822
Disputed
MAINE
Adm. 1820
VT.
N.H.
MASS.
CONN.
R.I.
NEW YORK
PENN.
N.J.
MD.
DEL.
VIRGINIA
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
FLORIDA TER.
Org. 1822
OHIO
INDIANA
Adm. 1816
KENTUCKY
TENNESSEE
ALABAMA
Org. 1817
Adm. 1819
MISSISSIPPI
Adm. 1817
ILLINOIS
Org. 1809
Adm. 1818
MISSOURI
Org. 1812
Adm. 1821
ARKANSAS TERRITORY
Org. 1819
LOUISIANA
Adm. 1812
MICHIGAN TER.
Org. 1805
UNORGANIZED TERRITORY
1820
Line of 1818
Line of 1819
1819 - 1821
Line of 1819 - 1821
OREGON COUNTRY
Claimed by Great Britain and United States
Longitude 100° West from Greenwich
L. L. POATES CO., N.Y.

the United States has a similar claim of prime occupation is the Oregon country, which originally was an indefinite stretch of the Pacific coast beginning somewhere to the south of the Columbia River basin, and running north indefinitely. Its inward extension was commonly held to be limited by the heads of the Pacific rivers, that is by the main chain of the Rocky Mountains. This region, however, like the Samoan Islands, was also claimed by other powers; and the final boundaries were reached by negotiations and arbitrations.

Boundaries of the Original Possessions of the United States.—The starting point of the territory of the United States and hence of its boundaries, is the area which made up the original United States. Taking July 4, 1776, as the commonly acknowledged birthday of the Union, it then had the combined boundaries of the thirteen communities which constituted the Union. That is, the seacoast from the eastern boundary of Maine (then a part of Massachusetts) to the southern boundary of Georgia; and thence inward so far as those communities extended, Vermont being at that time a part of New York. The boundaries of several colonies to the westward had not been definitely adjusted at the time of the Revolution, and the proclamation line of 1763 was supposed to limit most of them to the divide of the Appalachians. Before that question could be clearly raised, the conquest of part of the northwest country by George Rogers Clark in 1779, and the springing up of settlements west of the mountains in what are now Kentucky and Tennessee gave a strong presumption that the United States rightfully extended to the Mississippi. This presumption was recognized in the negotiations for peace, and the treaty of 1782 with Great Britain was intended to ascribe to the United States: (1) the coast line from the former French settlements on the north to the existing Spanish settlements on the south; (2) the line of the four Great Lakes, which are substantially expansions of the St. Lawrence River, was made the northern boundary; (3) the Mississippi was the western boundary; (4) the southern boundary was the 31st parallel from the Mississippi to the Apalachicola (a line suggested hy Congress in order to placate the Spaniards), and from the channel of the Apalachicola to the head of the Ste. Mary's and thence to the sea.

These lines may be considered the original boundaries of the United States and they conform to the great physical features of the region—the ocean, the Lakes, the Mississippi and the Gulf except that a strip was left between the southern boundary and the Gulf, toward which a strong pressure for annexation would infallibly be exerted.

These original houndaries were hard to locate on the face of the country. The land line from the Atlantic to the St. Lawrence River was confusingly described in the treaty; the separation of the islands in the water connection up to Lake Superior and thence from the head of the Pigeon River across a divide to tributaries of the Lake of the Woods, was a tedious and long continued task, performed by a succession of commissions and arbitrations. Under treaties of December 4, 1814, October 20, 1818, September 29, 1827, and August 9, 1842, reports of commissioners from various sections of this line were made, November 24, 1817, December 24, 1817, June 18, 1822, and a declaration of February 24, 1870. In addition the Maine boundary was passed upon by the King of the Netherlands in an arbitration decision of January 10, 1831, which was not accepted hy either party.

The net results of these adjustments were: (1) the mouth and source of the St. Croix River was determined by a joint commission under date of October 25, 1798; (2) the line from the head of the St. Croix northward as far as Mars Hill was run in 1818; (3) the line from Mars Hill across the country to the source of the Connecticut and thence to the intersection of the 45th parallel to the River St. Lawrence was determined by the treaty with Great Britain of August 9, 1842, and later surveyed and marked hy commissioners.

The line westward from the intersection of the 45th parallel and the St. Lawrence was laid down hy a commission under date of June 18, 1822, as far as the Neebish Rapids. In later reports down to 1827, portions of the line from Ste. Mary's River to the Lake of the Woods were agreed upon; and that section of the line was finally settled by the treaty of August 9, 1842. The original definition of the line beyond the Lake of the Woods in the treaty of 1782 was that it should run west to the Mississippi; since the Mississippi did not rise sufficiently far northward the clause was meaningless.

From the Lake of the Woods to the Rocky Mountains.—By the annexation of Louisiana in 1803 the United States became a neighbor to the British territories in the Northwest then held hy the Hudson Bay Company. In the treaty of Utrecht, 1713, provision had been made for a dividing line between the French and the English possessions, and it was later suggested that the 49th parallel would be a suitable line; but no boundary was ever agreed upon. This old tradition, however, doubtless affected the United States and Great Britain in their treaty of October 12, 1818, which provided for a line from the Lake of the Woods south to the 49th parallel and thence westward to the Stony Mountains. This line leaves the upper part of the valley of the Red River of the North to the United States; and a strip of territory draining into the Missouri on the north side of the boundary.

From the Rocky Mountains to the Pacific.—The American claims to Oregon based on the discovery of the river, first exploration by

EXTERIOR AND INTERIOR
BOUNDARIES of the UNITED STATES
in 1841
OREGON COUNTRY
UPPER CALIFORNIA
MEXICO
INDIAN COUNTRY
So termed by Act of 1834
Claimed by Texas
IOWA TERRITORY
Org. 1838
WISCONSIN
TERRITORY
Org. 1836
MICHIGAN
Adm. 1837
Disputed
MAINE
VT.
N.H.
MASS.
CONN.
R.I.
NEW YORK
PENN.
N.J.
DEL.
MD.
OHIO
ILLINOIS
INDIANA
VIRGINIA
KENTUCKY
MISSOURI
NORTH CAROLINA
TENNESSEE
SOUTH CAROLINA
ARKANSAS
Adm. 1836
MISSISSIPPI
ALABAMA
GEORGIA
LOUISIANA
FLORIDA TERR.
TEXAS
Independent State
Longitude 100° West from 95° Greenwich
L. L. POATES CO., N.Y.

Lewis and Clark in 1806, first trading settlement at Astoria in 1811, and first permanent argricultural settlements soon after 1830, were disputed by Spain, Russia and Great Britain. The annexation of Louisiana in 1803 brought undisputed United States territory up to the borders of Oregon, which was the name given to the band of territory between the Rocky Mountains and the Pacific.

A southern boundary line was brought about by the treaty with Spain, February 22, 1819, under which Spain withdrew all pretentions to any territory north of the 42nd parallel; the claims of Russia were disposed of by the treaty of April 17, 1824, under which the Russians withdrew claims south of 54 degrees and 40 minutes. This practically left a strip from the 42nd parallel to 54° 40′ in dispute between Great Britain and the United States. The settlement of the boundary was postponed by the treaty of October 20, 1818 (renewed August 6, 1827) for a joint occupation. Various compromise lines were proposed, and by treaty of June 15, 1846, the 49th parallel was accepted by both nations as their boundary from the Rocky Mountains to Puget Sound, thence a conventional line through Puget Sound and the Straits of San Juan de Fuca to the Pacific Ocean.

The geometrical east and west line was easy to survey and mark; the maps and findings of the joint commission on the 49th parallel were approved by a joint declaration dated February 24, 1870. A dispute arose, however, as to the line from the eastern coast of Puget Sound to the sea. The first question was whether the line of 49 degrees terminated where it first reached tidewater on the eastern side of Boundary Bay, or crossed that bay and Point Roberts to the open Sound. Upon this question hinged the determination of the middle of the channel which separates the continent from Vancouver Island; and the location of that middle point affected the question, which was the middle of the channel down to the Straits of Fuca, which involved the ownership of the San Juan group of islands. All these questions were adjusted by the treaty of Washington, May 8, 1871, providing for arbitration by the Emperor of Germany. His findings of October 21, 1872, were confirmed by the protocol of a conference dated March 10, 1873, thus completing the determination of the northern boundary.

Alaska Land Boundary.—The boundary of Alaska from the Arctic Ocean to the Pacific Ocean is founded upon a treaty between Russia and Great Britain concluded February 28, 1825, and on the corresponding treaty of cession by Russia March 30, 1867, which quotes the text of the British treaty. It is the meridian of 141° west from Greenwich, as far south as a supposed mountain range, and thence along that mythical range parallel with the coast to the southern point of Prince of Wales Island which is substantially in 54° 40′. By conventions of July 22, 1892, February 3, 1894, and October 20, 1899, commissions were appointed to determine this line. Inasmuch as the Canadian government claimed that the easterly line left the heads of several inlets within Canadian territory, a controversy arose which was adjusted by a *modus vivendi* of October 29, 1899, by treaty of January 24, 1903, for an arbitral commission, and by the decision of the Alaska boundary tribunal under date of October 20, 1903, which was favorable to the American contention. An agreement affected by exchange of notes Mareh 25, 1905, sets forth the adhesion of both governments to the finding on the line near the coast. By a subsequent convention of April 21, 1906, provision was made for a commission to run the meridian line on the 141° west.

Boundaries now within the Interior of the United States.—The original southern boundary of the United States was disputed by Spain but confirmed by the treaty of October 27, 1795; and it disappeared as an exterior boundary when the two Floridas were ceded by Spain in the treaty of February 22, 1819.

The boundaries of Louisiana were disputed in their whole course from the Perdido River westward, northward and eastward to the source of the Mississippi. The United States claimed the line of the Gulf from the Perdido to the Lakes north of New Orleans as a part of the Louisiana cession, and in 1810 took possession of the part west of the Pearl River, and in 1813 the portion between the Pearl and the Perdido Rivers. From those lakes to Vermilion Bay including the delta of the Mississippi, there was no dispute. From Vermilion Bay to the Rio Grande the United States claimed the coast, but in 1819 accepted the boundary of the Sabine River. The natural boundary of Louisiana to the westward was the watershed of tributaries of the Mississippi. The northern part of this line was adjusted by the treaty of October 20, 1818, fixing the 49th parallel. The western boundary from the Gulf to the 42nd parallel was adjusted by the Spanish treaty of February 22, 1819, by which a conventional line was described. From the 42nd parallel to the 49th no boundary was ever run, but it was considered by the United States to be the main divide of the Rocky Mountains.

The exterior boundary of Texas, annexed in 1846, was held by the Texans to be the Rio Grande from its mouth to its source, and thence a north line to the 42nd parallel. The denial of this claim by the Mexican Government was the immediate cause of the Mexican War; but Texas was never put in possession of the old Mexican settlements east of the upper Rio Grande. The external boundary of the Mexican cession of 1848 was fixed by treaty of February 2, 1848, as the Rio Grande River from a point north of El Paso, westward along the southern boundary and thence northward along

EXTERIOR AND INTERIOR
BOUNDARIES of the UNITED STATES
in 1851
MAINE
VT.
N.H.
MASS.
CONN.
R.I.
NEW YORK
PENN.
N.J.
DEL.
MD.
VIRGINIA
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
FLORIDA Ad. 1845
OHIO
MICHIGAN
INDIANA
KENTUCKY
TENNESSEE
ALABAMA
MISSISSIPPI
ILLINOIS
WISCONSIN Ad. 1848
IOWA Adm. 1846
MISSOURI
ARKANSAS
LOUISIANA
TEXAS Annexed 1845
MINNESOTA TERRITORY Org. 1849
INDIAN COUNTRY
NEW MEXICO TERRITORY Org. 1850
UTAH TERRITORY Org. 1850
OREGON TERRITORY Org. 1848
CALIFORNIA Adm. 1850
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the western boundary of New Mexico to the river Gila, as laid out on Distournel's map. From the junction of the Gila River and Colorado the line was to strike straight across country to a fixed point on the Pacific. It proved difficult to locate the boundaries of old New Mexico, and that part of the line was never run; but December 30, 1853, by the so called Gadsden Treaty, Mexico agreed that the northern line be pushed southward all the way from the Rio Grande to the Colorado River; and it was described by four geometrical lines, referable to parallels of latitude and meridians of longitude. The southern boundary of the United States was thus completed.

Summary.—The development of the exterior boundaries of the United States involves an intricate series of contentions. With the exception of Oregon, and a few of the little Pacific and West Indian islands, every part of the present empire of the United States has previously been a part of some other country; and as territory has been annexed, it has been subject to previous agreements and understandings. Every part of the land boundary of the continental mass and Alaska has been established by treaties followed by commissions which have frequently disagreed, requiring new treaties. The greater part of the land boundary is marked by permanent monuments which, especially on the northern frontier, have been at least once renewed. In 1913 the only boundary difficulty of significance is a local question on the Rio Grande River. The ocean possessions are, with a few exceptions, self-limited.

See ALASKA BOUNDARY CONTROVERSY; ANNEXATIONS TO THE UNITED STATES; AREA OF THE UNITED STATES; BOUNDARIES, INTERIOR; BRITISH NORTH AMERICA, DIPLOMATIC RELATIONS WITH; CUBA AND CUBAN DIPLOMACY; FLORIDA ANNEXATION; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; LOUISIANA ANNEXATION; MEXICO, DIPLOMATIC RELATIONS WITH; NORTHEAST BOUNDARY CONTROVERSY; NORTHWEST BOUNDARY CONTROVERSY; PHILIPPINES ANNEXATION; RUSSIA, DIPLOMATIC RELATIONS WITH; SPAIN, DIPLOMATIC RELATIONS WITH; TERRITORY IN INTERNATIONAL LAW; THREE MILE LIMIT; WATER BOUNDARIES AND JURISDICTIONS; WEST FLORIDA CONTROVERSY.

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ALBERT BUSHNELL HART.

BOUNDARIES OF THE UNITED STATES, INTERIOR

Basis of Boundaries.—The internal divisions of the United States go back to one or other of the following bases: (1) boundaries between the colonies of the European nations in territory now occupied by the United States; (2) internal subdivisions made by other than English authorities; (3) colonial subdivisions made by the English Government; (4) mutual agreements between the English colonies and in a few cases between states; (5) acts of the Congress of the United States since the year 1787.

Influence of Boundaries between the Colonies of Different Nations.—The eastern and northern boundaries of Maine are intended to correspond with the division between the French colony of Acadia and the English settlements previous to 1713. The line between Georgia and Florida reproduces the presumed line between the English and Spanish colonies previous to 1763. The channel of the Mississippi River and the line between Alabama and Mississippi on the north, and parts of Florida and Louisiana on the south, were, from 1782 to

INTERIOR BOUNDARIES
of the
UNITED STATES
in 1861
WASHINGTON TERRITORY
Org. 1853
OREGON
Adm. 1859
CALIFORNIA
NEVADA
TERR.
Org. 1861
UTAH
TERRITORY
DAKOTA TERRITORY
Org. 1861
NEBRASKA TERRITORY
Org. 1854
COLORADO
TERRITORY
Org. 1861
KANSAS
Org. 1854
Adm. 1861
Public Land
Strip
INDIAN
TERRITORY
NEW MEXICO
TERRITORY
TEXAS
MINNESOTA
Adm. 1858
WISCONSIN
MICHIGAN
IOWA
ILLINOIS
INDIANA
OHIO
MISSOURI
KENTUCKY
TENNESSEE
ARKANSAS
LOUISIANA
MISSISSIPPI
ALABAMA
GEORGIA
FLORIDA
SOUTH
CAROLINA
NORTH
CAROLINA
VIRGINIA
MD.
DEL.
N.J.
PENN.
NEW YORK
VT.
N.H.
MAINE
MASS.
CONN.
R.I.
Longitude 110° West from 105° Greenwich
C. L. POATES CO., N.Y.

1803, the boundary between the United States and the Spanish colonies. The present boundaries between Louisiana and Texas and between Oklahoma and Texas were the southwestern national boundary from 1819 to 1845.

The present southern boundary of Oregon and Idaho, the 42nd parallel, was from 1819 to 1848 the line between Spanish (later Mexican) territory and the claims of the United States. The northern boundary on the 49th parallel is based on a suggestion made for a line between the French and the English possessions soon after 1713. The eastern boundary of Alaska was from 1825 to 1867 the acknowledged boundary between Russian America and the British possessions. The boundary line between Connecticut and New York, substantially coincides with one made with the Dutch in 1650; and the western line of Delaware roughly coincides with the division between the Dutch colony of New Sweden and the English colony of Maryland. In all these respects the map of the United States contains evidences of the rivalry between colonizing nations.

Colonial Subdivisions Made by Other Powers than England.—The Swedish colony on the Delaware was annexed by the Dutch in 1655, but the colony of New Netherland had no definite boundaries and was never subdivided, and has, therefore, left little impression on the present map. The French at first attached the Illinois country to Canada, but it was later made a part of the colony of Louisiana. While the English held the Floridas from 1763 to 1782, they made the Apalachicola River the boundary between their colonies and East and West Florida, and the upper waters of the Apalachicola are still part of the boundary between Georgia and Alabama. From 1782 to 1803 the Spaniards had also colonies in East Florida and West Florida, but the dividing line was the Perdido River and both Floridas were bounded on the north by the 31st parallel. This subdivision accounts for the present boundary between Florida and Alabama, especially the line of the Perdido River.

Subdivisions made by Spain and Mexico within their own territories hardly show upon the present map except that the Red River as the southern boundary of Oklahoma, pretty nearly corresponds with the boundary between Spanish Louisiana and Spanish Texas. The present international boundary from the Colorado River to the Pacific Ocean is intended to correspond with the earlier Spanish subdivision between Upper and Lower California.

Colonial Subdivisions Made by the English Government.—Every one of the seventeen organized English colonies, including Nova Scotia, Quebec, East Florida and West Florida, on the continent of North America previous to the Revolution, had a seafront; and the lines between these seventeen colonies had, with a few exceptions, been so far developed that they stand to-day. The boundaries of the thirteen colonies which united in the Revolution were all based on royal grants or decisions, such as the Rhode Island Charter of 1643 and the court decision between Penn and Lord Baltimore in 1690. Nevertheless, numerous disputes on almost every boundary line of the Atlantic coast colonies have been the subject of controversy and of action by commissions, from the time of the original settlements to nearly the present year. In a few cases, as in the western boundary of Connecticut, one of the two neighbors still insists that the supposed boundary line is not correctly surveyed.

One element of confusion is that Massachusetts, Connecticut, Virginia, the two Carolinas and Georgia all go back to charters or grants assigning a water front and thence a belt stretching westward to the Pacific Ocean. The claims of all six states were dormant at the time of the Revolution, but broke out again, and were with great difficulty adjusted from 1781 to 1802 by the land cessions of those six states and also of New York (*see* CESSIONS BY STATES TO THE FEDERAL GOVERNMENT).

Another result of the English subdivisions was the creation of numerous small units, particularly Rhode Island with its 1,250 square miles, and Delaware with its 2,050 square miles. The policy of granting land in east and west strips accounts for the numerous east and west lines on the map, while the western boundary of Pennsylvania, is the only meridian line in the map of the original United States.

Boundary Agreements between Colonies and States.—Where the British Government did not come in and make decisions of its own, the colonies in many cases came to an understanding between themselves. Examples are the irregular part of the boundary between New Hampshire and Massachusetts; the western boundary of Massachusetts; and the famous Mason and Dixon's line run about 1767 between Pennsylvania on the north and Delaware and Maryland on the south. A curious effect of bad surveying is the old line between the claims of Virginia and North Carolina to the west of the mountains which was laid out several miles north of the true parallel, but has remained the permanent boundary between Kentucky and Tennesese.

A few of the ancient controversies are not yet settled. In 1912, New Hampshire formally claimed that its western boundary is the west side and not the middle of the Connecticut River. Delaware and New Jersey were for many years at odds over the jurisdiction of the Pea Patch Island; while the eastern boundary of Rhode Island has never been completely adjusted. In one case, that of the southwest corner of Massachusetts, a small area, Boston Corner, was in 1840, formally transferred by Massachusetts to New York, and there was a similar transfer in 1787 of a small area by South Carolina to Georgia.

INTERIOR BOUNDARIES
of the
UNITED STATES
in 1881

The original internal boundaries of the United States in many places follow river lines, particularly the Connecticut, Delaware, Potomac and Savannah. Notwithstanding the proclamation of 1763 confining the coast colonies at least for the time being to the region east of the Appalachian watershed, mountains form an interstate boundary only between Virginia and West Virginia (set apart in 1862), Virginia and Kentucky, North Carolina and Tennessee, and Montana and Idaho.

One method of determining boundaries by agreement has been the subdivision of states. (1) The first case occurred during the Revolution in the separation of Vermont, which from 1777 remained separate from New York, of which it had been a part, until with the consent of the parent state, it was admitted into the Union as a state in 1791. (2) In 1792, Kentucky, which up to that time since the Revolution had been an integral part of the commonwealth of Virginia, was set off and admitted into the Union on a boundary practically enacted by Virginia and confirmed by act of Congress. (3) The Western Reserve which had been acknowledged by the United States to be a part of the state of Connecticut in 1784, was in 1800 formally transferred, so far as jurisdiction is concerned, to the United States, and three years later was incorporated into the new state of Ohio. (4) In 1796, the region to the west of North Carolina, which for a brief period had declared itself to be the separate state of Franklin and which was technically ceded to the United States by North Carolina in 1790, was admitted to the Union. (5) In 1820, the district of Maine which for a century and a half had been a part of the commonwealth of Massachusetts, was admitted to the Union with the consent of the parent state. (6) A small section of Virginia which in 1800 was transferred to form a part of the District of Columbia was in 1846 at the desire of the inhabitants, and with the consent of Virginia, reincorporated into the state. The northern part of the district ceded by Maryland in 1800 constitutes the present District of Columbia and is entirely outside the jurisdiction of the present state. (7) A narrow strip of territory including the present city of Toledo, was occupied by Ohio under the supposition that it lay within the territorial limits defined by the act of Congress of 1802. When Michigan was admitted to the Union in 1837, the new community claimed that strip, but eventually came to an agreement with Ohio to give it up and was recompensed by receiving the northern peninsula. (8) In 1862, 46 counties of western Virginia declared that they were no longer a part of the commonwealth, formed a state constitution and in 1863 were admitted into the Union on the fiction of the consent of the legislature of the parent state, which was necessary under the Federal Constitution (Art. IV, Sec. iii, ¶ 1). Several other counties were later added; and Virginia was compelled to accept this separation.

State and Territorial Boundaries by Act of Congress—Under the clauses of the Federal Constitution giving Congress power to make "all needful rules and regulations respecting the territory or other property belonging to the United States" (Art. IV, Sec. iii, ¶ 2) combined with territorial powers implied from the war and treaty powers and the power to regulate commerce with the Indian tribes, the United States has freely defined and altered the boundaries of territories, and has admitted new states under boundaries set forth in the act of admission.

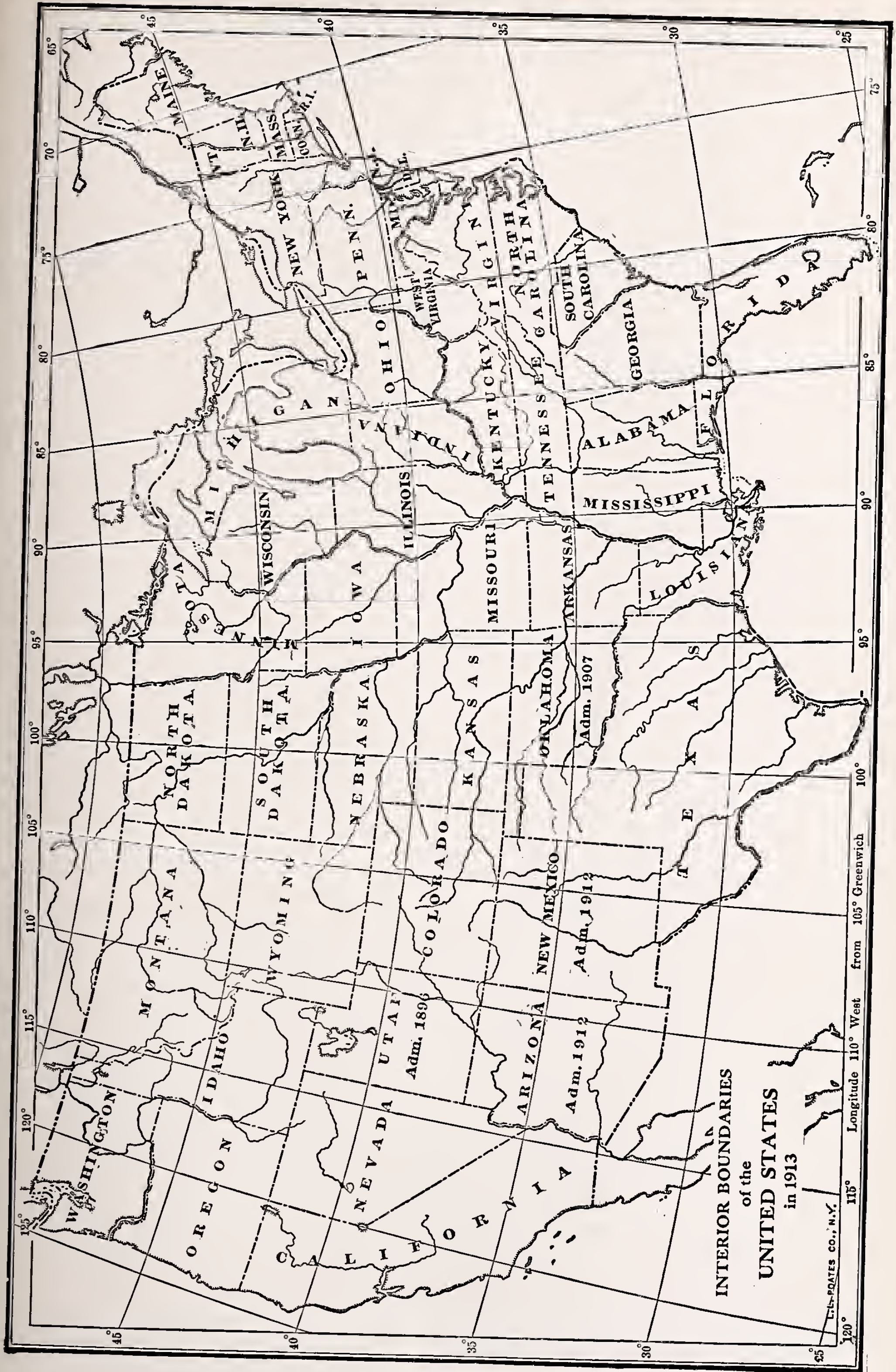
Many of the territorial boundaries thus created can still be traced in a single state or group of states. Thus the Northwest Territory of 1787 nearly coincides with the five states from Ohio to Wisconsin. The present state of Oklahoma is made up of the combination of the former territory of Oklahoma and Indian Territory. Washington, Oregon and Idaho are substantially the same as the former territory of Oregon. The two territories of New Mexico and Arizona were, in 1912, admitted into the Union with precisely their previous territorial boundaries.

The group of nine states east of the Mississippi and west of the Appalachians are nearly of a size, varying from about 36,000 to 56,000 square miles, and the belt of five states just west of the Mississippi (except Missouri which is larger) are laid out on about the same scale. Thence to the Pacific, the states have been carved out by Congress on a larger plan, partly because the number of commonwealths promised otherwise to be inconvenient and partly because nearly all those states contain great quantities of desolate and unavailable land and cannot support a population corresponding to their size. Oklahoma, North Dakota and Washington, the smallest of the states between the Missouri and the Pacific, have each 70,000 square miles, or more than eight times the area of Massachusetts. Six of those states have each more than 100,000 square miles, California rising to 158,000. Texas caps them all with 262,000 square miles, an area considerably less than that claimed by the state when it came into the Union.

But for the building of railroads, it would be impossible to keep up the necessary political connections between the parts of these enormous commonwealths. As it is, Colorado, Idaho, Washington and Oregon are broken up by mountain chains which in some cases almost subdivide the state into two separate communities. Nevertheless, there is no movement in any of those states to ask for subdivision by Congress.

The boundaries of the Congress-made states in every single case include either parallels or meridians or both; and two states, Wyoming and Colorado, are bounded by four straight

INTERIOR BOUNDARIES
of the
UNITED STATES
in 1891
WASHINGTON Adm. 1889
OREGON
CALIFORNIA
NEVADA
IDAHO Adm. 1890
MONTANA Adm. 1889
WYOMING Adm. 1890
UTAH TERRITORY
ARIZONA TERRITORY
COLORADO
NEW MEXICO TERRITORY
NORTH DAKOTA Adm. 1889
SOUTH DAKOTA Adm. 1889
NEBRASKA Adm. 1867
KANSAS
Cherokee Outlet
OKLAHOMA TER. 1890
TEXAS
MINNESOTA
IOWA
MISSOURI
ARKANSAS
LOUISIANA
WISCONSIN
ILLINOIS
MISSISSIPPI
MICHIGAN
INDIANA
KENTUCKY
TENNESSEE
ALABAMA
OHIO
GEORGIA
FLORIDA
SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
WEST VIRGINIA
MD.
DEL.
N.J.
PENN.
NEW YORK
VT.
N.H.
MASS.
CONN.
R.I.
MAINE
L.L. POATES CO., N.Y.
Longitude West from Greenwich


INTERIOR BOUNDARIES
of the
UNITED STATES
in 1913
Longitude 110° West from 105° Greenwich
MAINE
N.H.
MASS.
CONN.
R.I.
VT.
NEW YORK
PENN.
N.J.
DEL.
MD.
WEST VIRGINIA
VIRGINIA
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
FLORIDA
ALABAMA
MISSISSIPPI
TENNESSEE
KENTUCKY
OHIO
INDIANA
ILLINOIS
MICHIGAN
WISCONSIN
MINNESOTA
IOWA
MISSOURI
ARKANSAS
LOUISIANA
TEXAS
OKLAHOMA
Adm. 1907
KANSAS
NEBRASKA
SOUTH DAKOTA
NORTH DAKOTA
MONTANA
WYOMING
COLORADO
NEW MEXICO
Adm. 1912
ARIZONA
Adm. 1912
UTAH
Adm. 1896
NEVADA
IDAHO
WASHINGTON
OREGON
CALIFORNIA
L. L. POATES CO., N.Y.

lines. The Ohio and Mississippi Rivers are state boundaries through most of their course; and the Missouri, Wabash, Des Moines, Red, Arkansas, Colorado and Columbia make up sections of boundaries of a few states. Most of the eastern boundary of California is a straight line running approximately northwest to southeast.

These geometrical boundaries, laid down while the settlements were still small and the avenues of commerce undeveloped, sometimes divide areas which should be grouped together and assemble areas which have little in common. For instance, the northern and southern penninsulas of Michigan are different in spirit and in commercial interests; while Kansas City, Missouri, and Kansas City, Kansas, are substantially one community subdivided by an invisible state boundary. In many of the states, large cities have grown up in one corner and the city members and rural members contend for the control of the state legislatures. In Michigan, Wisconsin, Illinois, Missouri and Oregon, a large city on the border of the state is thus linked in with a great agricultural or mining state behind it.

Adjustment of Disputed Boundaries.—Since the adoption of the Federal Constitution, the federal courts have had jurisdiction in controversies between two or more states and between citizens of the same state claiming lands under grants of different states, and a considerable number of disputes about state boundaries have been adjusted by Supreme Court decisions. An instance is the long legal controversy between Iowa and Missouri over the question of the Des Moines River. The continuance of the rectangular boundaries much reduces the opportunity for litigation because those boundaries are referable to the shape of the earth and its relation to the sun.

Internal Boundaries of the Dependencies.—Of the outlying parts of the United States, few are large enough to be subdivided. Alaska has been organized into four districts for judicial purposes. Porto Rico is subdivided into seven districts, based on an act of Congress. The Philippine Islands are, by federal statute, divided into 27 provinces, besides a separate territorial division for the Moros and separate areas not included occupied by the wild tribes.

See American Government and Geography; Cessions by States to Federal Government; Dependencies of the United States; Far West; Middle West; Pacific Slope; South; Territories of the United States, Organized; Territory, Acquired, Status of; West as a Factor in American Politics.

References: Henry Gannett, *Boundaries of the U. S. and of the Several States and Territories* (3d. ed., 1904); B. A. Hinsdale, *Old Northwest* (2d. ed., 1899); O. P. Austin, *Territorial and Commercial Expansion of the U. S., 1800–1900* (Reprint from *Summary of Commerce and Finance,* Aug. 1902, with maps); Max Farrand, "Indian Boundary Line" in *Am. Hist. Rev.* (1905), 782–791; New York Regents' Boundary Commission, *Report upon the New York and Pennsylvania Boundary* (1886); New York Regents of the University, *Report on the Boundary of the State of New York* (1874–1884); F. L. Paxson, "Boundaries of Colorado" in University of Colorado *Studies,* July, 1904; C. S. Larzclere, "Boundaries of Michigan" in Mich. Pioneer and Hist. Soc., *Collections,* XXX (1906), 1–27; A. M. Soule, "Southern and Western Boundaries of Michigan" in Michigan Pol. Science Assoc. *Publications,* II, No. 21 (1896), "International Boundary of Michigan" in Mich. Pioneer and Hist. Soc., *Collections,* XXVI (1896); *Case of Penn vs. Lord Baltimore* (1 *Vesey* J. 444 and *Supp.* 1); C. W. Bowen, *Boundary Dispute of Connecticut* (1882); M. F. Farnham, *Documentary History of the State of Maine* (1901–1903); *Am. Hist. Leaflets,* Nos. 16, 22, 32 (1894–1901), R. G. Thwaites, "Boundaries of Wisconsin" in Wis. Hist. Soc. *Collections,* XI (1910), 451–511; F. L. Riley, "Demarcation of the Mississippi-Louisiana Boundary" in Miss. Hist. Soc. *Publications,* XI (1910), 61–74; F. G. Caffey, "Annexation of West Floridas to Alabama" in Ala. State Bar Assoc., *Proceedings,* XIX (1906); S. A. Green, *Northern Boundary of Massachusetts in its Relations to New Hampshire* (1891); J. G. Smith, "Massachusetts and New York Boundary Line" in Massachusetts Historical Society, *Proceedings,* XIX (1906): Mason and Dixon Resurvey Commission, *Report on the Resurvey of the Maryland-Pennsylvania Boundary* (1909); L. N. Wheaton, *Maryland and Virginia Boundary Controversy, 1668–1894* (1905); H. B. Adams, "Maryland's Influence in Founding a National Commonwealth" in Md. Hist. Soc., *Fund-Publication,* No. 11 (1877); Lee Phillips, *Virginia Cartography* (1896); Texas Boundary Commission, "Report" in *House Exec. Docs.,* 50 Cong., 1 Sess., No. 21 (1887); F. J. Turner, "Western State Making" in *Am. Hist. Review,* I (1895), 70, 251; G. H. Alden, "*New Governments West of the Alleghanies*" (1897); bibliography in New York Public Library, *New York State Boundaries, Bulletin* No. 11 (1900); maps in A. B. Hart, *Epoch Maps* (rev. ed., 1910); W. R. Shepherd, *History Atlas* (1911); documents in W. Macdonald, *Select Documents of U. S. History* (1911); documents in the publications of the various states, provincial and historical societies (see A. P. C. Griffin, "Bibliography of American Historical Societies" in Am. Hist. Assn., *Annual Report* [1908]). Albert Bushnell Hart.

BOUNTIES. Nature.—A fiscal bounty is a premium paid by the government to the producer or exporter of certain articles. The bounty is direct, or open, when a certain sum is actually paid by the treasury for each unit of goods produced or exported. It is indirect,

or concealed, when the cost of producing or marketing the goods is reduced by some favor granted by the government, *e. g.*, where state-owned railways carry goods for export at specially low rates, in which case the reduction conceded is a virtual bounty. Bounties sometimes result unintentionally from imperfect methods of fiscal administration, especially in connection with drawbacks. (*See* DRAWBACKS ON DUTIES).

Operation.—The effect of a bounty, as also its design when intentional, is to encourage the production or the export of the article upon which it is paid. It differs from protective duties, in that it enables the producer to sell his goods at a lower price than he could otherwise afford and to recoup himself at the expense of the treasury, instead of indirectly from the consumer. Hence the bounty, if not nullified by foreign countervailing duties, aids in both the foreign and the domestic market, while protective duties facilitate sales only in the home market. Bounties attract to the favored industry some capital and labor which, in their absence, would be otherwise employed, and thus fix the limit of benefits which consumers as a class may derive from them.

If applied to industries subject to diminishing returns, additional product is obtained at increasing cost, and the benefit to consumers (consumer's rent) becomes less than might be obtained from the product of equal labor and capital in other industries. The converse holds in the case of industries subject to increasing returns. Hence, Marshall says that consumers as a whole might benefit by taxing commodities subject to diminishing returns and applying part of the proceeds to bounties for commodities subject to increasing returns.

Some bounties have their main justification in other than economic considerations, as for shipbuilding and navigation, in the interest of national defense. Practical advantages of bounties over protective duties are that they do not raise the price to consumers; their cost to the nation is direct, measurable and more easily regulated or abolished. Bounties on production were once, but vainly, expected to avoid the resentment felt by foreign countries toward protective duties or export bounties.

Instances.—Bounties were common in the mercantile system—the most noted being the English corn bounties. The most important recent application is to the continental sugar bounties; besides the bounties for shipbuilding and for navigation (*see* SUBSIDIES TO SHIPPING).

The bounty on domestic sugar production (*see* SUGAR BOUNTIES), 1890–94, is the most noteworthy recent example. A few states of the Union have offered bounties with a view to encourage the beet sugar industry.

See BOUNTIES, FEDERAL AND STATE; FREE TRADE AND PROTECTION; TARIFF POLICY OF THE UNITED STATES; TAXATION, CONSTITUTIONAL THEORY OF; TAXATION, PRINCIPLES OF.

References: Alfred Marshall, *Principles of Economics* (6th ed., 1910), V, ch. xiii; W. Cunningham, *Growth of English Industry and Commerce in Modern Times* (1907); A. de Lavison, *Protection par les Primes* (1900); P. T. Cherington, "State Bounties and the Beet-Sugar Industry," in *Quart. Jour. of Econ.*, XXVI (1912), 381–386. E. H. VICKERS.

BOUNTIES, FEDERAL AND STATE. There have been two ways in which the government has encouraged industries by direct grants of money to private concerns. These are ship subsidies, and bounties. In connection with the operation of the tariff, drawbacks have also been paid on exports; but since a drawback is only the refund of a duty it is not in the nature of a contribution from the treasury. Since ship-subsidies have usually been given to encourage mail lines, they may be kept out of the discussion of bounties.

Of the two undisputable bounties granted by the Federal Government since 1789 the first under an act of 1790 was paid on dried and pickled fish exported from American fisheries. The bounty was small, ten cents per barrel on pickled fish, and ten cents per quintal on dried fish; and was really nothing more than a drawback on the salt which was subject to duty. This bounty, so-called, was repealed in 1807.

The sugar bounty was passed as a part of the McKinley tariff act of October, 1, 1890. It provided that between July 1, 1891, and July 1, 1905, the treasury should pay "to producers of sugar testing not less than 90 degrees by the polariscope, from beets, sorghum, or cane sugar grown within the United States, or from maple sap produced within the United States, a bounty of two cents per pound." A bounty of one and three-fourths cents was offered for sugar testing between 80 degrees and 90 degrees. In order to secure the bounty it was necessary for the producer to secure a license and file various statements concerning the amount of his crop. By act of August 27, 1894, the bounty was repealed. Between the years 1892 and 1897, $36,041,134 was paid out of the treasury for sugar bounties, nearly all going to Louisiana producers of cane sugar. The beet sugar producers received but a small amount—about two million dollars, most of which went to California raisers. The sum paid to sorghum and maple sugar producers was an insignificant amount.

The states have granted bounties freely. Aside from the large grants of land and money to railroads and canals, they have given large sums for irrigation purposes, roads and other public works. There are many cases of remission of taxes for a period of years to industrial and manufacturing firms as inducements for them to locate in some state or city. From Colo-

nial times, states or localities have offered liberal bounties for the extermination or dangerous and destructive animals. Even now nearly all the western states give bounties for killing coyotes, wolves and mountain lions.

The largest bounties given by municipalities have been in the way of profitable franchises to street car lines, water and light works and other public service corporations (*see*).

The sugar bounty extended over such a short period that it is impossible to judge of its benefit. The Louisiana producers were aided but in no greater degree than they have been since 1894 by a protective tariff. If the bounty had not been disturbed there might have been quite a different development in the sugar industry.

See Labor, Relation of the State to; Sugar Bounties; Tariff Administration; Taxation. Robert C. Line.

BOUNTIES, LAND. The practice of granting lands as a reward to soldiers goes back to colonial times. After the French and Indian War great quantities of land were thus granted by Virginia west of the mountains; and George Washington acquired and located large quantities of these bounty lands. When Virginia ceded her claims to the Northwest Territory a reservation was made of a large tract extending northward from the Ohio River, and the present land titles in that section go back to the beginning of bounty lands. Large gifts of land were also made to revolutionary soldiers both by states, and later by the Federal Government. The soldiers of the War of 1812 and of the Mexican War in their turn received bounty land in enormous quantities. Union soldiers of the Civil War could take up homesteads on more advantageous terms than other people; and to this day soldiers' widows can homestead land on a shorter residence than other people.

Large quantities of the bounty land were located by scrip which was transferable, and hence was sought by land buyers and speculators because they could seek out especially valuable tracts. The Ohio Company of 1788 was founded by revolutionary soldiers who, however, bought their lands outright with evidences of public debt. In a few other cases old soldiers settled in little colonies on their bounty lands. The whole system is part of the deliberate purpose of the Federal Government to divest itself of the public land. See Bounties to Soldiers and Sailors; Land Grants; Public Lands and Public Land Policy. References: P. J. Treat, *National Land System* (1910); A. B. Hart, "Public Land Policy of the U. S." in *Practical Essays on Am. Gov.* (1893), 233–258. Albert Bushnell Hart.

BOUNTIES TO SOLDIERS AND SAILORS. Men drawn from the militia of New England to join the British Army for the invasion of Canada received bounties in money as did also those that wintered at Louisburg in 1760. The Continental Congress voted small money bounties and grants of land; but in 1776 Washington feared that his forces would dissolve unless more was done. The enemy was paying £10 for recruits. The states also gave bounties of varying values, and New York and Virginia offered land. In 1780 Washington had to offer $200 each to retain his veterans though he denounced the system "by which men are taught to set a price upon themselves and refuse to turn out except that price be paid." He induced Congress to give five years' full pay to the officers in order to disband the Army in 1783.

The settlement of Ohio was promoted by the military land-grants (*see*); and large areas of the public domain were parcelled out to soldiers or their heirs. Five million acres went to soldiers of the War of 1812, the claims of survivors of the Mexican and Indian Wars were recognized by laws of 1847, 1850, 1852, and 1855; and 530,203 warrants, covering 58,652,450 acres, were granted, prior to 1883. Under an act of 1862 land scrip worth $1.25 per acre was distributed for 9,600,000 acres. At the time of the Civil War lands were given, not only to soldiers but to civilians by the Homestead Act (*see*). To soldiers, rewards were paid in money. After 1861 all volunteers got bounties, the states and towns competing with each other and with the general Government. Individuals also hired substitutes at high rates. To prevent desertion, the War Department paid by instalments, $400 being offered for the reënlistment of veterans. Other recruits before 1865 got as much as $1,500. The states paid no less than $285,000,000 in bounties during the war; and the total was about equal to the pay of the Army during the same period. Bills for the "equalization of bounties" by subsequent federal payments have failed to secure the approval of Congress.

Among the surviving forms of bounty may be noted increased pay after reënlistment, accompanied for the Navy by allowance of four months' pay, extra pay, prizes for marksmen and for men of the engineer's department of a successful cruiser, and gratuities for winners of a medal of honor. All forms of prize-money, including bounty for the destruction of an enemy's vessel, were abolished by the act of 1899, which placed the pay of the Navy on the same footing as that of the Army.

See Bounties, Land; Bounty-Jumping; Conscription and Draft; Enlistment, Military and Naval; Expenditures, Military and Naval; Pensions, Military and Naval; Substitutes; Volunteer.

References: T. Donaldson, *Public Domain* (1884), 232–237, 1251; Geo. Washington, *Writings* (ed. by W. C. Ford, 1889), IV, 380, 467, V, 111, 301, VIII, 223, 484, X, 206, 252, 262; L. C. Hatch, *Administration of the Am. Revo-*

lutionary Army (1904), ch. v, viii; C. A. W. Pownall, *Life of T. Pownall* (1908), 106, 148; E. Upton, *Military Policy of the U. S.* (1907), 21, 28, 40–42, 63, 123, 206; *U. S. Revised Statutes* (1901), Title 32, ch. x; U. S. Navy Department, *Laws Relating to the Navy* (1898), 416–420, *Navy Regulations* (1909), 192, 250, 270; P. Pulsifer, *Navy Yearbook* (1910), 654, 684; and year by year; U. S. War Department, *Military Laws* (1908), 257, 512, 601, 1229, 1243; *Official Records* (1880–1901), Series III, IV, 642, 807, 1149, V, 672–675, 725, 834.

C. G. CALKINS.

BOUNTY JUMPING. Among the immediate results of the system of conscription authorized by Congress in 1863 was the sharp competition for recruits between officers of the general government and the agents of states and of towns desirous of avoiding the draft. Many enlisted to secure the bounty offered and deserted at the first opportunity; and gangs were organized by substitute brokers to repeat the "bounty jumping" in different localities. Bounty jumpers, that is, "men enlisting and deserting for a vocation," were punished with the full rigor of military law during the last year of the Civil War. See BOUNTIES, MILITARY AND NAVAL; CONSCRIPTION AND DRAFT; ENLISTMENT, MILITARY AND NAVAL; SUBSTITUTE, MILITARY; VOLUNTEER. References: J. F. Rhodes, *Hist. of the U. S.* (1900), V, 227; L. C. Baker, *Hist. of the U. S. Secret Service* (1868), 399, S. Wilkeson, *Recollections of a Private* (1887), 2; U. S. War Department, *Military Laws* (1908), 522-529; *Official Records* (1880–1901), Series III, V, 672–675, 834–836.

C. G. CALKINS.

BOURBONS. A term originally applied to a "Democrat behind the age and unteachable." With such a signification the term appeared in the Boston press in 1884. By extension it was applied to extreme conservatives and immovable partisans. O. C. H.

BOWMAN ACT. Under the act of March 3, 1883, known as the Bowman Act, either house of Congress, or any committee thereof, may refer to the court of claims any claim or matter requiring investigation or determination of facts. The court does not enter judgment, but reports its findings. Jurisdiction does not extend to Civil War claims or claims barred by law. The reports are continued from Congress to Congress until acted upon. The act of March 3, 1887, known as the Tucker Act, provides that in any case referred under the Bowman Act, the court may (on being satisfied that it has jurisdiction) render judgment or decree and report its proceedings to Congress. The court also reports facts bearing on the removal of legal obstacles to the liquidation of a claim. A claim dismissed for want of jurisdiction under the Bowman Act may be referred under the Tucker Act. The Attorney General reports these judgments or decrees to Congress at the beginning of each session. See COURT OF CLAIMS. References: A. C. Hinds, *Parliamentary Precedents* (1899); H. R. *Doc. 576*, 55 Cong., 2 Sess. (1899); 22 *Stat. L.* 485; 24 *Stat. L.* 505. C. M.

BOXER RISING. A movement in northern China taking its name from a secret society of malcontents and fanatics assuming magical powers and immunity from bullets. Under their leadership the northeastern provinces arose against foreigners and Christian converts, destroyed railways, and swarmed into Peking in May, 1900. The Empress-Dowager, yielding to the reactionary party in the palace, encouraged their attempt to exterminate the foreigners there and besiege the legations from June 14 to Aug. 14. The rescue was effected by international forces. The uprising was kept from spreading to the south chiefly by the firmness of the Yangtse viceroys. See CHINA, DIPLOMATIC RELATIONS WITH. References: A. H. Smith, *China in Convulsion* (1901); *Senate Docs.*, 57 Cong., 1 Sess., No. 67 (1901); H. C. Thomson, *China and the Powers* (1902); E. A. Ross, *The Changing Chinese* (1911).

F. W. W.

BOYCOTTS. General Boycotts.—The essence of the boycott, named from a Captain Boycott who was refused labor and supplies by his neighbors in Ireland, is the refusal by a combination of men to have business dealings with persons against whom they have a grievance. The boycott has been employed extensively in the business world, and in aid of projects of social reform. Even in international disputes it has played a rôle. In 1907 American exports to China fell off by one-half because of a widespread boycott of our manufactures by the Chinese.

Labor Boycott.—The boycott has been of greatest importance in labor disputes. Trade unions frequently declare boycotts against manufacturers with whom they are at war. They endeavor to get the entire trade union membership throughout the country to refuse to buy the boycotted products. Frequently trade unions also boycott the dealers handling such boycotted goods, and occasionally even other persons who use them.

Trade union boycotts were very extensively employed in the eighties. Since that decade they have ceased to be of any importance save in industries a major portion of whose product is consumed by wage-earners.

Legality of Boycotts.—The weight of authority is to the effect that boycotting is never lawful. Some courts concede that boycotts are lawful under certain circumstances, but in concrete cases boycotts have almost never been held to have been legally conducted. Nevertheless, judicial decisions condemning

the boycott have had slight effect upon its use by trade unions. Criminal convictions for conspiracy to boycott have rarely been secured. Injunctions against boycotting have only had the effect of giving to the boycotts involved the wide publicity needed for success. A change in the situation, however, has been made by the decision of the Supreme Court, in Loewe *vs.* Lawlor (28 *U. S.* 30, 1908), that treble damages may be recovered under the Sherman Anti-Trust Law for losses sustained through interstate boycotts.

See ARBITRATION OF LABOR DISPUTES; BLACKLISTING; EMPLOYERS' ORGANIZATIONS; STRIKES; UNION LABOR.

References: J. Burnett, "Boycott in Trade Disputes" in *Ec. Jour.*, I (1891), 163–73; Symposium on Boycotts in *Nat. Civic Federation Rev.*, I (1903), No. 3; N. A. Schaffner, "Recent Boycott Decisions" in Am Acad. of Pol. and Soc. Sci., *Annals*, XXVI (1910), 23–33; Library of Congress, *Acts and Injunctions in Labor Disputes* (1911). J. R. COMMONS.

BOYS' REFORM. Measures for the reformation of boys in the United States, as distinguished from adult criminals, date from the New York House of Refuge in 1823. Gradually the idea of retributive punishment has been abandoned; and in its place has come the ideal of the duty of the mother state, as guardian of neglected and misguided children. The progress of this idea is seen in the change of nomenclature through the past ninety years. We have had for children "prisons," "prison camps," "houses of refuge," "reform schools," "industrial schools," "training schools," schools named after places, as the "St. Charles School for Boys," schools named after individuals, as the "Lyman School for Boys." These names indicate the gradual departure from the prison idea and punishment to the ideal of reformation, training and guardianship. The effort at the present day is to create character through wise education, normal happy life, cultivation of initiative, courage, honor, integrity and industry. See COURT, JUVENILE; PROBATION; SCHOOLS, INDUSTRIAL. References: H. H. Hart, Ed., *Preventive Treatment of Neglected Children* (1910); Homer Folks, *Care of Destitute, Neglected and Delinquent Children* (1912).

H. H. H.

BRADFORD, WILLIAM. He was born in Yorkshire, England, March, 1588, and died May 9, 1657. As a separatist, he became an active promoter of migration to some English colony and embarked on the Mayflower. Upon the death of Governor Carver, Bradford was chosen his successor and continued to occupy the office of governor until his death with the exception of a period of five years when he refused to be reëlected. To his influence more than to that of any other man was due the ultimate success of the Plymouth Colony. Among the movements in which he was conspicuous was the granting of land in severalty, 1623; the appointment of five assistants, and later seven, to act with the governor as a council in 1624; and obtaining the title of Plymouth Plantation from the New England Council, 1630. In 1634, representative government was instituted in the colony through the sending of delegates from each of the towns to the general Court. The following year, Governor Bradford conveyed to this court his title to the territory of the colony. See MASSACHUSETTS BAY COLONY; PLYMOUTH COMPANY. References: William Bradford, "History of Plymouth Plantation" in Mass. Hist. Society, *Collections*, 4th Ser. (1856), III, and other editions. J. A. J.

BRANCH BANKING. See BANKING, BRANCH.

BRAVE, TAMMANY. A nickname given the members of the Tammany Society, originating from the fact that in the early history of the society officers assumed Indian names, ceremonies and dress. See TAMMANY. O. C. H.

BRAZIL. The United States of Brazil, republic, is the largest of the South American countries. This region was discovered in 1500, and was allotted to Portugal, to which kingdom it belonged, with a few intervals of struggle between the Spanish and Dutch, until it became independent, under its own Emperor, in 1822. Slavery was abolished in 1888, and the struggle connected with this act led to the declaration of the republic, with no bloodshed, November 15, 1889. Geographically, Brazil is situated between latitude 4° 22′ north and 33° 45′ south; and longitude 34° 40′ and 73° 15′ west (Greenwich), and has an area of 3,218,130 square miles, with a population of 20,515,000, between six and seven to the square mile. The present constitution was adopted in 1891, and makes of the nation a federal union of states, twenty in all, with a federal district and the territory of Acre (acquired from Bolivia in 1903). The federal government, republican and representative, is divided into legislative, executive and judicial branches. The legislative functions are performed by a senate and a chamber of deputies. The senate has sixty-three members elected by direct popular vote for nine-year terms, three for each state and the federal district, renewed by thirds every three years. The chamber of deputies is elected by popular vote, one for each 70,000 inhabitants, for three year terms. A president and a vice-president are elected for four-year terms by direct vote and may not be immediately re-elected. Suffrage is free to males over twenty-one. The cabinet is composed of seven ministers: foreign affairs; finance; justice, interior and public instruction; war; marine; communication and public works; agriculture, industry and com-

merce. The judiciary is the national supreme court of fifteen justices appointed by the president with the consent of the senate, and a federal judge in each state appointed by the recommendation of the supreme court. The army has a peace strength of 30,000, but a new law making every Brazilian liable to military service increases the war strength to above 300,000. The navy consists of something more than 30 vessels, but recent additions ordered will increase the number to over 40. The navy will then have about 8,000 men in commission. Education is largely a matter of state control, not always being compulsory. Brazil has no national university, but there are national establishments for both law and medicine, with polytechnic, mining and art schools. In Brazil, church and state are independent of each other. The capital of the republic is Rio de Janiero. **References:** J. I. Rodriguez, *Am. Constitutions* (1905), I, 133–170; Pan American Union, *Bulletin* (monthly).

ALBERT HALE.

BRIBERY. Bribery is an ancient and crude form of political corruption. Political bribery is the giving of a bribe or a reward for doing that for which the proper motive should be a conscientious sense of duty. Such a crime can scarcely be eradicated by force of law without the support of public opinion, for the bribe giver and the bribe taker are equally guilty and equally well satisfied with the results, while no outsider is closely and directly affected by this corruption of power.

Bribery of the individual voter is by far the most dangerous field for corruption because it pollutes the stream of democracy at the fountain head. No accurate and complete statistics as to the proportion of voters thus affected can be made; but bribery has been known to exist in many states of the Union and in both rural and urban precincts. Careful estimates in Connecticut in 1892 placed the proportion at about 16 per cent of the voters for the whole state. The evidence secured by Judge Blair in Adams County, Ohio, in 1910 resulted in the temporary disfranchisement for accepting bribes of 2,000 of the 6,000 voters of the county. In crowded city wards bribery in connection with colonization (*see* VOTERS, COLONIZATION OF) and other electoral frauds is sometimes extensive. Payments for legitimate party work on election day shades almost imperceptibly into virtual bribery through the hiring of workers without real duties. Publicity (*see*) and corrupt practices (*see*) acts endeavor to remove this evil by strictly defining legitimate party work and by limiting the paid workers and carriages to a reasonable number. Bribery in its direct and indirect forms also creeps into the party primaries and conventions, thus corrupting party machinery.

But corrupt influence does not stop with the voter. It pursues the elected and appointed officers in all departments of government. Many an office itself has been used as a bribe for party work, and when so used it carries with it the opportunity for further corruption. The crime of accepting bribes has at one time or another been proved against members of city councils in a large proportion of American cities. In other cases the relations between city councils and owners of city franchises have been such as to raise suspicions and to provoke accusations that have not been verified. Here, as in other legislative and administrative offices, bribery is closely associated with the crime of blackmail. Individuals and corporations buy government favors; this is bribery. Officeholders turn upon those holding concessions and demand payment for continued favors; this is blackmail. Where one ends and the other begins seldom is evident.

States legislatures are less subject to bribery than are city councils, but here, also, the cases of proven or confessed bribery are numerous. Usually the occasion for bribery is the election of a United States Senator or the passage of railroad or other corporation legislation. The revelations in Illinois in respect to the election of Senator Lorimer in 1909 seemed to indicate the use of both the "jackpot," or collective bribery system, and individual bribes.

Cases of confessed or proven bribery are very few in Congress, although some shadows have been cast on certain Senators and Congressmen by their connection with investments or their acceptance of large retainers from interested corporations. A large number of Congressmen were treated to very profitable investment in connection with the building of the Union Pacific Railway. If this was not technical bribery it was accounted its moral equivalent.

See CORRUPTION, POLITICAL; CORRUPT PRACTICES ACTS; FRAUDS, ELECTORAL; LOBBY; PARTY FINANCE; SPOILS SYSTEM.

References: C. A. Beard, *Am. Government and Politics* (1910), 671–672; J. Bryce, *Am. Commonwealth* (4th ed. 1910), II, 150, 166–167, 639; M. Ostrogorski, *Democracy and Party System* (1910), 87, 111, 206–213; P. S. Reinsch, *Am. Legislatures* (1907), 231, 234, 237; J. J. McCook, "Alarming Proportion of Venal Voters" in *Forum*, XIV (1892), 1–13, and "Venal Voting," *ibid.*, 159–177; A. Shaw, "National Lesson From Adams Co." in *Review of Reviews*, XLII (1911), 171–180; R. C. Brooks, *Corruption in Am. Politics and Life* (1910); E. E. Russell, "At the Throat of the Republic" in *Cosmopolitan*, XLIV (1907–08).

JESSE MACY.

BRIBERY IN LEGISLATIVE BODIES. Bribery by the use of money to purchase votes, though not unknown in the past history of the Congress of the United States, has been disclosed only in rare instances and the reputa-

tion of the Congress of the United States for integrity ranks high in comparison with other legislative bodies. Direct bribery in state and city legislatures, however, has been by no means infrequent. Bribery of members through grants of patronage and attempts to influence their action by withholding patronage are commonly to be found in all legislative bodies in this country, and are an inevitable result of the spoils system in connection with American constitutional methods of appointment to office. A course commonly pursued for securing legislative favors which was indulged in even in defiance of constitutional and legal provisions was the granting to members of free passes for using the railroads, street railways and telegraph. Bribery in the case of a state senator in New York was found by the senate in 1910 and there have been flagrant instances of it recently in the city councils and boards of supervisors of St. Louis, Pittsburgh, San Francisco and elsewhere. See CORRUPTION, LEGISLATIVE. E. H. G.

BRIDGES, PUBLIC. In the eye of the law bridges are commonly parts of the highway with which they connect, and are subject to the usual road legislation—except so far as they cross navigable streams. In such cases the questions arising are adjusted by the state, unless the waters thus crossed are boundaries between states and other states, or foreign countries; or are parts of waters navigable to the sea, in which case they come under the provisions for foreign or interstate commerce.

Toll Bridges.—Bridges on toll roads constructed and operated by individuals or corporations are a part of the road and subject to the restrictions and endowed with the privileges of the grant or charter (*see* ROADS). Many toll bridges connect public highways, and may be the only means of communication between the two banks of the stream. This system sprang up when the communities were poor, and when such expenses of transit were supposed to bear only on the users instead of on the whole community served. Such toll bridges are now uncommon in New England, but are to be found frequently in New York state, and in most parts of the Union. In numerous cases, as the Eads Bridge of St. Louis, the same structure carries railroad trains and ordinary wheel toll traffic.

The rates for toll travel are usually fixed in the charter of the bridge or road company or a maximum is fixed without a special charter provision. Rates on toll bridges are subject to the same kind of public regulations as those on other private highways.

Public Structures.—Most of the small rural bridges are built and maintained by the towns or counties; but where a bridge crossing a wide river is a general thoroughfare, several counties or towns may be assessed for a portion of the cost, either by agreement or by some permanent authority or temporary provision under the state government. Most states can compel local governments to construct a bridge and to levy taxes for the cost. The Cambridge Bridge, between Cambridge and Boston, begun July, 1900, was completed in 1907 at an expense of three million dollars under a mandatory statute, and the cost assessed on the two municipalities and the Boston Elevated Railway Company.

City Bridges.—Most city bridges are built and maintained by the municipality. In hilly cities bridges are often built to carry streets across dry ravines or valleys, and in some cases are called "viaducts" or "elevated roadways" in order to emphasize the fact that they are not subject to ordinary bridge law.

Several of the American cities are so situated that great bridges are essential, particularly New York, which now has in use four bridges across the East River; while a bridge across the North River is under contemplation. Three of these bridges are of the suspension type. The first commonly called "the Brooklyn Bridge" was opened for traffic in 1883 and cost for construction $11,000,000. It carries wheel traffic, trolley cars and special bridge electric cars. Until 1911 a toll was charged, but in that year all the East River bridges were made free.

Materials of Bridges.—The usual city bridge crosses a navigable stream, and if low, must be provided with a draw. Chicago has notable instances of this system. All the early bridges were of wood; the longer ones of an arch or truss type, many of them covered. Some turnpike bridges, including those of the Cumberland Road, were built of substantial arches of masonry, which have lasted without repair for a century; yet stone or brick bridges are still unusual in America, partly because the wooden truss bridges, and later the iron bridges, could be built in long spans, and were much cheaper. Unfortunately, these materials do not lend themselves to the graceful structures which so beautify foreign cities. With few exceptions, American highway and city bridges are ugly, though the increasing use of concrete makes possible a comparatively cheap structure of arches, and the park and boulevard bridges are already artistic.

Some cities include bridges and road administration under a single department; in others there is a special bridge department. Most such departments have a labor force of draw-tenders—sometimes practically a sinecure. Bridge repairs are a constant and expensive item of the budget.

Grade Crossing Bridges.—The whole bridge problem is complicated by the railroads, which run on grades to thousands of places. Even a city like Philadelphia has still numerous grade crossings, and in New York the freight trains of the New York Central Railroad run (1913) through the middle of Eleventh Ave-

nue for a mile and a half. A strong pressure is brought to bear to separate the grades in cities, and the railroads by agreement or by mandatory legislation have to pay a part of the expense of the necessary bridges. The overhead highway bridges, if of iron, are subject to deterioration from the smoke stack gases.

See FERRIES; GRADE CROSSINGS; NAVIGATION; PARKS AND BOULEVARDS; PUBLIC WORKS, NATIONAL, STATE AND MUNICIPAL; ROADS.

References: H. S. Jacobey, "Recent Progress in Am. Bridge Construction" in Am. Assoc. for Ad. of Sci., *Proceedings*, LI (1902), 375, 391; J. G. Walton, "Some Notable Am. Railway Bridges" in *Cassier's Mag.*, XXIX (1906), 202-208; U. S. *Laws Relating to the Construction of Bridges over Navigable Waters* (1903); M. W. Davis, *Theory and Practice of Bridge Construction* (1908).

ALBERT BUSHNELL HART.

BRISCOE vs. BANK OF KENTUCKY (1837).—The Bank of Kentucky, chartered by the state (which was the owner of its capital stock and elected its officers and directors and authorized them to issue bills of credit), had sued Briscoe in a Kentucky court for the amount due on a note payable to the bank. Briscoe pleaded that the note was given for a corresponding amount of such bills of credit received by him, that such bills were issued in violation of the Federal Constitution (Art. I, Sec. x, ¶ 1) prohibiting states from issuing bills of credit, and that his note given therefor was void. Judgment rendered against Briscoe, was affirmed on ultimate appeal to the Supreme Court of the United States, which held that "to constitute a bill of credit within the Constitution it must be issued by the state on the faith of the state and be designed to circulate as money. It must be paper which circulates on the credit of the state; and is so received and used in the ordinary business of life" (1837, 11 *Peters* 257; 9 L. Ed. 709). The bills of credit in question were said not to be within this definition, because not issued by the state. See BILLS OF CREDIT; CRAIG vs. MISSOURI.

E. McC.

BRITISH COLUMBIA. The most westerly province of Canada. It comprises about 312,000 square miles, extending from the Pacific Ocean to the Rocky Mountains and from the northern frontiers of Washington and Idaho to the southern boundaries of Alaska. Its population in 1910 was estimated at about 250,000. The territory had practically no history until 1840, when a part of it became the subject of a diplomatic contest between Great Britain and the United States. In 1849 the Hudson Bay Company established trading headquarters on Vancouver Island, and a few years later came the discovery of gold on the mainland. A large influx of prospectors and others followed the gold discovery and in the late fifties it became necessary to provide for the organization of a civil government. Two administrative territories were established, but in 1866 these territories were united into one province henceforth called British Columbia.

The province did not enter the confederation at the outset, but was admitted by special act in 1871, one of the conditions of its entrance being that the Dominion Government should pledge itself to secure railway connection between British Columbia and the eastern provinces. This condition was fulfilled by the completion of the Canadian Pacific Railway in 1885.

Prior to the admission of British Columbia the province did not have a system of responsible government, but was administered by a lieutenant-governor, appointed by the Crown, and a legislative council composed of the appointive heads of the various public departments with a few elective members added. The system was not satisfactory to the people of the province, and the desire to secure its replacement by a system of responsible government was one of the things which prompted negotiations for admission to the Dominion. Since it became a member of the confederation, British Columbia has had a provincial constitution similar in all important respects to those of the other provinces. Its chief executive officer is a lieutenant-governor, appointed for a five-year term by the governor-general of Canada, an executive council or ministry, headed by a prime minister, and an elective assembly of forty-two members. The prime minister and his colleagues, though nominally chosen by the lieutenant-governor, are responsible for all their official acts to the assembly, by which body they may be removed from office at any time. British Columbia is represented in the Dominion Parliament by three senators and by seven members of the House of Commons, but this quota will probably be somewhat increased by the redistribution of seats on the basis of the census of 1911. The chief political problem of the province during recent years has been the regulating of Asiatic immigration. At various times the assembly has enacted stringent laws designed to exclude Chinese and Japanese; but these acts have invariably been disallowed by the federal authorities at Ottawa. The capital of the province is Victoria, on Vancouver Island; but the largest and most important city is Vancouver, on the mainland.

See CANADA, DOMINION OF; CANADIAN PROVINCES; HUDSON BAY COMPANY.

References: H. H. Bancroft, *Hist. of British Columbia*, 1792-1887, Vol. XXXII of Bancroft's *Works* (1882); A. Begg, *Hist. of British Columbia* (1896); A. Métin, *La Colombie Britannique* (1908); R. E. Gosnell, *Year Book of British Columbia (annual)*.

WILLIAM BENNETT MUNRO.

BRITISH NORTH AMERICA, DIPLOMATIC RELATIONS WITH

The complicated and often threatening relations of British North America with the United States are largely due to the necessity of indirect negotiations through the mother country beyond the sea, and the disposition of Canada to take undue advantage of her dependent position to shield herself from responsibility, while complaining that her interests have been sacrificed by British diplomacy. As a former Canadian official puts it, "Like animals doomed to vivisection for the good of science, Canada has been unsparingly operated upon for the good of the Empire."

Early Status.—From the conquest of Canada by the British in 1760 for more than a century it was a colony similar in type to the British West India colonies, incapable of making diplomatic agreements and limited by the treaties and the commercial legislation of the mother country. In 1775 and again in 1812 to 1814 unavailing attempts were made by the United States to conquer Canada. The Canadian rebellion of 1837 led to a responsible colonial government which had greater internal authority, but exercised little influence on diplomacy. The boundaries of Maine (*see* NORTHEASTERN BOUNDARY CONTROVERSY) were settled in 1842, and those of Oregon (*see* NORTHWESTERN BOUNDARY CONTROVERSY) in 1846, with little reference to the local governments.

Reciprocity.—Ever since 1815 there had been in Canada a strong sentiment for closer commercial relations with the United States, accompanied by a decided feeling in favor of annexation. The repeal of the English Corn Laws of 1846 and of the Navigation Laws in 1849 indicated a change of front on the part of the home government, and this was still more strongly brought out by the reciprocity (*see*) treaty of 1854, secured by the active exertions of Lord Elgin, Governor General of Canada. The treaty was a concession on the part of Great Britain to Canada, and practically recognized the right of the people of Canada to be consulted with regard to their commercial status and relations.

The reciprocity treaty was favorable to the trade of both countries, but during the Civil War the attitude of the ruling classes, both in Great Britain and in Canada was unfriendly to the United States. Confederate officials were harbored in Canada and directed several predatory expeditions against the United States, particularly the capture of St. Albans (1864). This led to a rising tide of feeling which culminated in the termination by the United States of the reciprocity treaty in 1866. In May, 1870, a so-called Fenian invasion was planned in the United States but was easily subdued a few miles north of the boundary.

Dominion.—For a few years it looked as though Canadian annexation would be accomplished. Senator Sumner, in a speech of 1870 demanded it as the price of peace for the mother country; and the British nation was not strongly averse to giving up a dependency then small, poor and undeveloped. This danger was headed off by the shrewd formation of the Dominion of Canada under an Act of Parliament of 1867. Into it entered the two great provinces of Quebec and Ontario, the maritime provinces of Nova Scotia and New Brunswick, and a little later (1871) British Columbia. With the aid of British capital, small subsidies from the home government, and the western lands, the Canadians succeeded in building railroads first through the eastern part of the country, then across the continent, thus binding the Dominion together and strengthening a distinct Canadian feeling.

Commerce.—Meanwhile the two questions of trade and of the fisheries were still unsettled. After the settlement of the threatening *Alabama* claims with the mother country by the Geneva Arbitration (*see*) in 1872, the Canadians attempted to bring about a new reciprocity treaty and sent various semi-official "pilgrimages" to Washington with that view. In 1874 Canada's efforts resulted in a draft treaty (between Secretary Fish acting for the United States and Sir Edward Thornton and Hon. George Brown on behalf of Great Britain) which was accepted by Great Britain and Canada but not ratified by the United States Senate. In 1887 a scheme of commercial union between Canada and the United States was proposed and widely discussed for several years.

Fisheries.—The question of the coast fisheries was a difficult one, because after 1866, the two countries reverted to the old treaty of 1818 which was indefinite and not well adapted to changes of conditions. Under the treaty of Washington (1871) a provision was made for reciprocity and fisheries with a payment for the superior Canadian advantages, but the Halifax award of 1877 was thought excessive by the United States, and in 1885 the United States again terminated the arrangement and a second time reverted to the treaty of 1818. This soon resulted in Canadian enforcement of irritating restrictions on the fishing grounds. In 1887 an international commission (three British and three Americans) appointed to adjust the question of the fisheries met at Washington, and reached an agreement known as the Chamberlain-Bayard treaty, which was

rejected by Congress. A *modus vivendi* of 1888 was continued both by Canada and by Newfoundland until the question was settled by the Hague Tribunal in 1910 (*see* NEWFOUNDLAND FISHERY CONTROVERSY), although Premier Bond of Newfoundland proposed to abrogate it in 1905 after the failure of the Hay-Bond Treaty.

Tariffs.—A great step toward greater autonomy in Canada was the concession by Great Britain in 1887 of the right of Canada to negotiate commercial treaties with foreign powers. This was in line with the practice which had been growing up, of passing revenue acts which included duties on goods from the mother country. Thenceforward the Canadian Parliament made tariffs at its discretion, allowing a preferential rate to imports from Great Britain, but deliberately building up Canadian manufacturers even against those of the mother country. This policy, which included efforts to contravene the tariffs of the United States, led to friction and bad feeling, particularly because the territory of the two powers was interlocked. For instance, the mutual duties on coal unfavorably affected New England which got a supply from the provinces, and Ontario which got its supply from Ohio and Pennsylvania. The American tariffs also discriminated against Canadian agricultural products imported into the United States.

Transit.—Another point of difficulty was the grain trade from the Northwest through the Lakes and the St. Lawrence. Grain came down from Canada through Minnesota where it was milled and re-shipped; some American grain passed through the Canadian side of the Lakes, and some of it sought an outlet through the Canadian Welland and St. Lawrence canals to Montreal. Controversies arose over the effort of the Canadian Government to discriminate either by lower rates or by rebates in favor of the Canadian grain shippers. The controversy gradually developed for some time before 1888 when Cleveland first made it the subject of a message to Congress. It remained unsettled in 1892, resulting in retaliatory action by President Harrison, but was adjusted in 1893. Another difficulty arose out of the international lines of railroad. Since 1883 the Michigan Central and Wabash R. R. have run from Buffalo through Ontario to Detroit. On the other hand the Canadian Pacific (in 1853) opened a railroad from St. Johns across Maine to Montreal. In both cases privileges were given of shipping freight in bond so as to avoid custom house formalities on entering and leaving the external territory. On the northern boundary, also, the question of lines crossing from the northwestern states to the Canadian northwest presented administrative problems. President Cleveland in 1887, in order to compel a settlement of the fisheries question, proposed that the privilege of railroad transit in bond should be withdrawn, but it was not carried out.

In a special message of August, 1888, he requested authority for such retaliatory action against Canada, but this message was followed by no change in the methods of the Treasury under the act of Congress of March 1, 1873. In 1892, under Harrison, the question of the power of the Treasury to act without additional legislation was considered, but decision was postponed by circumstances. In February, 1893, President Harrison, seeking a policy adapted to new conditions growing in part from the completion of the Canadian Pacific Railway and the creation of the Interstate Commerce Commission, suggested to Congress that perhaps a modification or abrogation of the treaty article (Art. 29 of Treaty of 1871) relating to the transit of goods in bond, was involved in any complete solution of the question.

Reciprocity.—In 1892 three members of the Canadian Cabinet went to Washington and held a conference with John W. Foster who was engaged in the reciprocity negotiations under the McKinley Tariff act (*see*), and who promptly answered their proposal for a renewal of the reciprocity treaty of 1854 by refusing to accept any reciprocity unless it should also include a list of manufactured goods—a *sine qua non* which proved an insuperable barrier to a successful termination of the negotiations. The conferences closed with no agreement beyond a promise (unfulfilled) of the Canadian commissioners that they would remove certain Welland Canal tolls.

Fur Seals.—A controversy arose in 1886 over the seizure by the United States of Canadian vessels engaged in catching seals outside the three mile limit of the Aleutian Islands (*see* SEAL FISHERIES). The British Government was nerved to action by the protests of the Canadians, and when E. J. Phelps, American minister at London, negotiated an agreement for international protection of the seals, Canada's objection prevented its going into effect, and in the end the Canadians claimed and obtained a share in the negotiations on the subject. In 1893, the controversy was decided by the Arbitral Commission of Paris. Further efforts to prevent the extermination of the seals by international agreement in 1897 were frustrated because the Canadians put so much pressure upon their home government that Great Britain declined to join. In November, 1897, a meeting was held in Washington of American and Canadian experts, the latter sent by the Liberal Government which had just come into power, but they could come to no agreement. Sir Wilfred Laurier, the new Prime Minister, who accompanied the experts to Washington, unwilling to consider the subject of sealing alone, insisted upon introducing several other subjects, including commercial reciprocity.

Alaska Boundary.—The Canadian Government consented to the appointment (under protocol of May, 1898) of a joint high commission of twelve to consider twelve subjects—including fur-seals, fisheries, Alaskan boundary, reciprocity, transit questions, alien labor laws, mining rights, and naval armaments on the lakes. It included three members of the Canadian Cabinet and a representative of Newfoundland. After three sessions at Quebec and Washington it reached a practical agreement on several questions, but made little progress on reciprocity and finally split on the Alaska boundary. A temporary adjustment of the boundary was secured by a *modus vivendi* effected in October, 1899. The seat of negotiations was then transferred to London, but the British, or rather the Canadian, Government refused to recede from its position in favor of a reference of the entire Alaskan boundary question to arbitration. Finally, negotiations were resumed at Washington and the Hay-Herbert treaty of January 24, 1903, referred the question to a tribunal of six "impartial jurists of repute," three chosen by each government, who should "consider judicially the questions submitted to them." The British Government appointed Lord Chief Justice Alverstone and two Canadians. The delegates of the United States were Senator Elihu Root, Senator Henry Cabot Lodge and Senator George Turner. The Canadian Government unofficially complained that these three men "were not jurists" as contemplated by the treaty, but went on in the arbitration (*see* ALASKA BOUNDARY CONTROVERSY). The tribunal met at London, on October 20, 1903. Its decision fixed the land boundary in favor of the American claim to a line back of the head of the water inlets, but established a water boundary which gave Canada two of four uninhabited islands. The decision was reached by Lord Alverstone the British member, agreeing with the American members; and, as in several other so-called arbitrations, was really a decision of the British Government not to insist on the boundary which the Canadians had vehemently urged. The Canadian members, therefore, and some of the Canadian press, regarded the decision as a rebuke by the Imperial Government.

Autonomy.—Although the Canadians came to regard the decision as a reasonable compromise, the immediate irritation produced strong expressions from Sir Wilfrid Laurier and others in favor of securing for Canada a fuller share in making her own treaties—a policy proposed by the Liberal party as early as 1870. The tendency to give the great colonies a larger voice in international arrangements seemed inevitable. Although Canada has not attained the full rank of a nation in the exercise of the treaty making power she now practically determines her own diplomatic relations. A striking proof of her increasing importance was furnished in 1897 by the prompt action of the British Government in response to her request to denounce the commercial treaties with Belgium and Germany. The change of diplomatic system in progress is further illustrated by a mission of Sir Wilfrid Laurier to Paris to conduct negotiations for a commercial treaty with Canada, the mission of a member of his Cabinet to Japan in 1907 to adjust the immigration question, and a clause of the Anglo-American arbitration treaty of 1908 in effect providing that no question affecting the interests of the Dominion shall be arbitrated without her consent. "The full independence of Canada will come," says John W. Foster, "whenever it shall happen that the Government at London refuses to accept and ratify a treaty or shall obstruct a measure regarded by Canada as vital to her interest." Canada does not seem to favor immediate independence, but rather seeks the realization of some plan of imperial federation which (while serving "to secure the peace of the world") would admit her to "full political manhood without the dishonor of annexation (to the United States) or the risk and the ingratitude of independence."

Boundary Waters.—Other sources of dispute have been lessened by a treaty of 1909 which provides for the establishment of an international joint commission of the United States and Canada consisting of six members (three appointed by each government) to exercise jurisdiction in deciding cases involving the use, obstruction or diversion of boundary waters.

Reciprocity of 1911.—Trade relations between Canada and the United States were unsettled in 1913. The efforts of the United States to remove certain difficulties arising from the passage of the Payne-Aldrich tariff bill of 1909 by the American Congress resulted in the appointment of a commission and the negotiation of an agreement (January, 1911) to secure restricted reciprocity by concurrent legislation at Washington and Ottawa. This agreement, which aimed at fuller and freer trade relations, and which after a sharp political struggle passed both houses of Congress, became the chief issue of a keenly fought campaign in Canada and was lost (September, 1911) by the overwhelming defeat of the Liberal Laurier Government which had held power for fifteen years. By a Canadian sentiment, resulting from the "national policy" launched by Sir John Macdonald a quarter century earlier after repeated unsuccessful attempts to secure reciprocity, the agreement was regarded as a deviation from the principle of British preference initiated by the Laurier Government itself in the tariff act of 1897, and as a danger which might destroy the equilibrium of Canadian national development and weaken the integrity of the empire. One of the chief arguments against the agreement was an impression in Canada that the United

States designed the plan as a step toward annexation.

Newfoundland.—A great point of friction between Canada and the United States was removed by the settlement of the Newfoundland fishery controversy (*see*) by the Hague Award of 1910.

In conformity with the provisions of a treaty of arbitration negotiated in 1908 a special agreement of 1909 was arranged with the concurrence of the governments of Canada and Newfoundland, submitting to the Hague Court of Arbitration the questions relating to the fisheries of the North Atlantic coast arising under the treaty of 1818. Of the six members of the board, one was the Chief Justice of Canada and another a justice of the United States circuit court of appeals. The result seemed to satisfy both Canada and the United States.

In the history of Newfoundland, the most prominent (sometimes perilous) diplomatic problem has been the French shore grievance resulting from special privileges granted to French fishermen by the treaty of 1783, which had practically prevented English settlements on one of the most desirable portions of the island. Although conditions along the French shore were improved by the establishment of law-courts and custom houses in 1877, restrictions on industry and settlement continued and seriously affected the internal improvement of the whole island. An Anglo-Saxon agreement of 1875 (to prevent encroachment upon French rights), which the provincial government refused to accept, was enforced by British and French naval forces. In 1889 the growing resentment of the Islanders assumed a threatening attitude, resulting in conflicts of authority in 1890.

The French shore problem has been a dominating factor in determining the relations of Newfoundland to England, Canada and the United States. It weakened loyalty to England, and would have furnished a severe problem to Canada if Newfoundland had joined the confederation. It encouraged closer trade relations with the United States and even suggestions of annexation. After Great Britain (at the request of the Canadian Government) refused sanction to the so-called Blaine-Bond Treaty of 1890 relating to trade between the United States and Newfoundland, the Newfoundland Government indignantly retaliated against Canada by withdrawing valuable fishing privileges—thus provoking Canada to impose a duty on Newfoundland fish. Although after the period of ill-feeling terminated with the recall of the hostile acts, the Canadian and Newfoundland governments held conferences to discuss the question of the accession of Newfoundland to the confederation, proposals of union were still viewed with alarm. The difficulties between Great Britain and France were terminated in 1904 by an agreement of France to abandon her claim to a lodgment on Newfoundland's western seaboard in return for concessions in Morocco and West Africa.

In 1902 Canada withdrew her objection to the Blaine-Bond treaty which had lain dormant for twelve years. Negotiations for a new arrangement on the same line resulted in the Hay-Bond treaty which was amended to death in the American Senate in 1904. Instigated by the failure of the treaty, Premier Bond initiated against the United States unfriendly measures to which the Imperial Government refused to give its approval. In response to the American protest against the unfriendly attitude of the Newfoundland ministry, the British Government under an act of 1819 issued an imperial rescript overriding all colonial enactments in conflict with the treaty of 1818 and placing the settlement of questions arising between colonial and American fishermen in the hands of the British naval commodore on the station. Against this the Bond ministry bitterly protested, claiming that it was a virtual abrogation of the colonial charters of self government; but the Imperial Government was not ready to risk a rupture with the United States, and soon thereafter an agreement was reached for reference of the whole question to the Hague tribunal.

See ALASKA BOUNDARY CONTROVERSY; CANADA, DOMINION OF; CAROLINE AFFAIR; COLONIAL INTERNATIONAL RELATIONS; COMMERCE, AMERICAN MOVEMENT OF; EMIGRATION FROM THE U. S.; FISHERIES, INTERNATIONAL; FOREIGN POLICY OF THE UNITED STATES; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; HALIFAX COMMISSION AND AWARD; MCLEOD CASE; NAVIGATION OF INTERNATIONAL RIVERS; NEWFOUNDLAND FISHERIES DISPUTE; NORTHEAST BOUNDARY CONTROVERSY; PHYSIOGRAPHY OF NORTH AMERICA; QUEBEC ACT; RECIPROCITY.

References: J. M. Callahan, *Neutrality of the Amer. Lakes* (1898), ch. vii; John W. Foster, *Diplomatic Memoirs* (1909), II, chs. xxxv, xxvi; Thos. Hodgins, *Brit, and Am. Dipl. Affecting Canada* (1900); A. L. Lowell, *Government of Eng.* (1908), II, ch. lv; C. G. D. Roberts, *Hist. of Canada* (1897), ch. xxvi, ch. xxvii, 437–441; Goldwin Smith, *Canada and the Canadian Question* (1891), ch. x; *Can. Law Rev.*, I (1902), 525–537; *Contemp. Rev.*, XC (1906), 550–563; *Forum*, *XXV* (1898), 329–340; *N. Am. Rev.*, CXXX (1880), 14–25, CLIII (1891), 468–480; *Rev. of Rev.*, XLI (June, 1910), 718–724; *Spectator*, XCII, (1904), 74; *House Misc. Doc.*, 50, 43 Cong., 2 Sess. (1875); *House Rep.* 1127, 46 Cong., 2 Sess. (1880).

J. M. CALLAHAN.

BROAD CONSTRUCTION. See CONSTRUCTION AND INTERPRETATION; IMPLIED POWERS.

BROOKLYN. Since January 1, 1898, a borough of New York City coterminous with Kings County and covering an area of seventy square

miles at the western end of Long Island. Its population in 1910 was 1,634,351. Prior to consolidation, Brooklyn was a city of the state of New York with nearly one million inhabitants. The original settlement of western Long Island was made by the Dutch in 1636. One settlement was named Breuckelen after a town in Holland. It came under English rule in 1664, was incorporated as a village in 1816, and as a city in 1834. See New York City.

E. H. G.

BROTHER JONATHAN. A name applied to the citizens of the United States in a collective sense, said to have been derived from Jonathan Trumbull, upon whom Washington often called for advice and aid in securing supplies and whom Washington addressed as "Brother Jonathan."

O. C. H.

BROWN, JOHN. John Brown (1800–1859) was born at Torrington, Conn., May 9, 1800. In 1805 the family removed to Ohio, where he learned the tanner's trade. From 1826 to 1835 he was postmaster at Richmond, Pa. After several changes of residence he settled, in 1846, at Springfield, Mass., as a wool merchant. The business was unsuccessful, and in 1849 he took a farm at North Elba, N. Y., near a proposed negro colony established by Gerritt Smith (*see*). His hatred of slavery, belief in forcible emancipation, and intense religious zeal drew him to Kansas in the spring of 1855; and the "Pottawatomie massacre," May 25, 1856, was an indication of his spirit and policy. He left Kansas in October, 1856, spent 1857 in planning for a more direct assault upon slavery, and in 1858 formed in Canada a provisional government for his proposed free state. A part of this year was also spent in Kansas. During the summer of 1859 he collected a handful of men and some arms near Harper's Ferry, Va., and on October 16 attacked and captured the arsenal there; but a force of marines under Col Robert E. Lee quickly overpowered him. He was found guilty of treason, murder, and conspiracy, and was hanged at Charlestown, Va., December 2, 1859. See Slavery Controversy.

References: O. G. Villard, *John Brown* (1910); W. E. B. DuBois, *John Brown* (1909); F. B. Sanborn, *Life and Letters of John Brown* (1885); J. F. Rhodes, *Hist. of the U. S.* (1893–1905), *passim*; F. E. Chadwick, *Causes of the Civil War* (1906).

W. MacD.

BRYAN, WILLIAM JENNINGS. William J. Bryan (1860–), born in Illinois, practiced law in that state from 1883 until his removal, in 1887, to Lincoln, Nebraska. In 1890 he was elected as a Democrat to represent in Congress a district which normally was overwhelmingly Republican. In 1892 he was reëlected, but in 1894 defeated. During his two terms in the House he was a member of the ways and means committee. He opposed with vigor the McKinley Tariff, but his name came to be associated principally with the cause of "free silver." In a notable speech of August 16, 1893, in opposition to the repeal of the silver purchase clause of the Sherman Act, he urged that the United States, without awaiting the agreement of other nations, adopt the free and unlimited coinage of silver at the ratio of 16 to 1. It was his belief that the adoption of a bimetallic standard by the United States would induce, or compel, other nations to take the same step.

At the Democratic convention of 1896 Bryan, already the recognized leader of the silver wing of the party, pressed with such eloquence the adoption of the free coinage plank which he had written that he carried all before him and was himself accorded the nomination of the party. After a remarkable personal compaign, in which the chief issue was that of free coinage, he was defeated by William McKinley.

In 1900 he was again nominated and again defeated by McKinley, the issues of this campaign being chiefly free coinage and "imperialism." The second defeat obscured for a time his leadership; but in 1908 he was a third time nominated, and again, after a campaign centering upon the trust question, was defeated by Taft. As editor of *The Commoner,* as orator, and as mentor, his influence continued a highly important factor in the political situation. At the Democratic National Convention at Baltimore in 1912, he assumed a firm stand in behalf of the independence of his party from capitalistic domination. He was appointed Secretary of State by President Wilson, and assumed office March 5, 1913.

See Democratic Party; Legislatures and Legislative Reform; Nebraska; Progressives; Silver Controversy; Sixteen to One.

References: A. L. Gale and G. W. Kline, *Bryan the Man* (1908); R. L. Metcalfe, *The Real Bryan* (1908); W. J. Bryan, *The First Battle; a Story of the Campaign of 1896,* with a biographical sketch by M. B. Bryan (1897).

F. A. Ogg.

BRYCE, JAMES. James Bryce (1838–), publicist and diplomatist, was born at Belfast, Ireland, May 10, 1838. He was educated at Glasgow and at Trinity College, Oxford, and in 1862 was elected fellow of Oriel. In 1867 he became a barrister, and in 1870 was appointed regius professor of civil law at Oxford, holding the chair until 1893. In 1880 he entered Parliament and from 1885 to 1890 sat for South Aberdeen. In 1886 he was made undersecretary of state for foreign affairs. In 1892, as chancellor of the Duchy of Lancaster, he entered the Cabinet; and in the home rule debates of that year, as in those of 1886, strongly supported Gladstone. In 1894 he became president of the Board of Trade, retiring on the fall of the Rosebery ministry in 1895. In 1905–

06 he was chief secretary for Ireland, and in 1907 was appointed ambassador to the United States, which post he held until 1913, when he resigned. In 1913 he was appointed a member of the Permanent Court of Arbitration at the Hague. His *American Commonwealth* (2 vols., rev. ed., 1910) is the most profound, comprehensive, and sympathetic study of American institutions thus far made. See FEDERAL STATE; POPULAR GOVERNMENT. References: "Professor James Bryce," in *Century*, XVII (1890), 470–472; "Mr. Morley and Mr. Bryce in America" in *Rev. of Reviews,* XXX (1904), 548–550. W. MACD.

BUCHANAN, JAMES. James Buchanan (1791–1868), fifteenth president of the United States, was born in Franklin County, Pa., April 23, 1791. In 1812 he was admitted to the bar, and began practice at Lancaster. He sided with the Federalists in supporting the War of 1812, and in 1814–15 was a member of the legislature. From 1821 to 1831 he was a member of Congress, where he supported Jackson, and in 1829, as chairman of the judiciary committee, conducted the impeachment trial of Judge Peck. In 1831 he was appointed minister to Russia, negotiating the first commercial treaty with that country. In 1834 he was elected United States Senator from Pennsylvania, retaining his seat until 1845, when he resigned to become Secretary of State. Throughout his congressional career he showed himself a thoroughgoing strict constructionist, and strongly opposed the abolition movement. He was in private life from 1849 to 1853. In the latter year he was appointed minister to Great Britain, and in 1854 was one of the signers of the "Ostend Manifesto," favoring the annexation of Cuba. He resigned in 1856, and in the same year was elected President, receiving 174 electoral votes against 114 for Frémont, the Republican candidate. When secession began in 1860 he could, for a time, find no warrant for opposing it. The Republicans would not act with him and his administration closed in gloom. In 1866 he published *Mr. Buchanan's Administration on the Eve of the Rebellion.* He died at Wheatland, near Lancaster, June 1, 1868. See CIVIL WAR, INFLUENCE OF, ON AM. GOVERNMENT; DEMOCRATIC PARTY; SLAVERY CONTROVERSY. References: J. B. Moore, Ed., *Works of James Buchanan* (1908–11); G. T. Curtis, *Life of James Buchanan* (1883); J. F. Rhodes, *Hist. of the U. S.* (1893–1905), I–V, *passim;* F. E. Chadwick, *Causes of the Civil War* (1906). W. MACD.

BUCK AND BRECK. The nickname of James Buchanan (*see*) and John C. Breckenridge (*see*) President and Vice-President 1857–1861, current during the campaign of 1856. Buchanan was also nicknamed "Old Public Functionary." See DEMOCRATIC PARTY.

O. C. H.

BUCKET SHOP. See GAMBLING; STOCK JOBBING.

BUCKSHOT WAR. A name given to riots at Harrisburg, Pennsylvania, December 1838, growing out of a contest over the election of certain members to the legislature from Philadelphia County. General Patterson's order in compliance with Governor Ritner's proclamation calling the militia into service, provided for "thirteen rounds of *buckshot* cartridges" hence the contest was dubbed "Buckshot War."

O. C. H.

BUCKTAILS. A nickname originally applied to members of the Tammany Society in Pennsylvania and later in New York City, on account of the buck's tail worn in the hat as a part of the insignia of the order. In 1817 the Tammany Society opposed Clinton's canal bill, and by extension the term "bucktails" was applied to all the other opponents of the proposed canal system throughout the state.

O. C. H.

BUDGET SYSTEM, EUROPEAN. A national budget is the financial statement of the government for a definite period (commonly a year) which reveals in detail the object and amount of expenditures; the sources and yield of revenues; and the way in which expenditures and revenues are made to balance. It originated in the success of representative government in checking extravagance and corruption by control of expenditures and the revenues to defray them; and by limiting expenditures to the specific purposes authorized. Clearly stated accounts were necessary to make these requirements effective. The rapid increase of national expenditures with the resulting burdens of taxation have emphasized the importance of the budget. Efforts to enforce popular consent and administrative responsibility have resulted in a system of varying practices, precedents, rules and laws which reveal, however, in all European states, similar main features.

Preparation.—Budget preparation begins with a statement in detail by each department of government indicating: (1) the object and amount of each item of expenditure for the preceding year; (2) an itemized estimate of expenditures for the succeeding year. In coordinating these estimates, the ministry of finance exercises control, specially effective in Great Britain. Assisted by the various bureaus which collect revenues, it also makes an itemized estimate of the yield of existing sources of revenue. If estimated expenditures overrun the revenues it must provide for the establishment of equilibrium by suggesting in the budget means for the reduction of estimates or increase of revenues.

Divergences between Countries.—Important divergences in practice between countries are:

(1) The budget begins January 1, in France, Belgium, Holland, Austria-Hungary, Russia, Switzerland; April 1, in Great Britain, Germany, Prussia, Denmark, Sweden, Norway; July 1, in Italy, Spain, Portugal. (2) Countries adopting British practice attain relative precision of estimates by shortening the interval between preparation and enforcement of the budget; while French practice allows an interval of thirteen to fifteen months. (3) British practice includes in the yearly budget only receipts and expenditures actually realized within the fiscal year. French practice includes all items pertaining to the year's accounts. (4) The gross budget, which shows the ratio of cost to net yield, and brings into scrutiny all funds handled by the Government, is now common. But some minor states—the German Empire, also, until 1900—include itemized balances in a net budget. (5) For convenience, Great Britain divides her budget into: (a) a permanent and fixed part—"Consolidated Fund"—which includes about one-sixth of the expenditures and four-fifths of the revenues and which does not require annual vote; (b) "Supply Services" which are subject to annual scrutiny and adjustment. The Franco-Belgian constitutional principle requires a yearly vote of all expenditures and revenues. Germany's yearly budget includes complete estimates, but leaves to parliamentary adjustment little more than new proposals. (6) Continental budgets are commonly separated into: (a) ordinary budget, which includes items of annual recurrence; (b) extraordinary budget, which includes unusual items of expenditure balanced by loans and other unusual revenues. The distinction between ordinary and extraordinary expenditures and revenues for budget purposes is difficult to maintain and has a tendency to lure to questionable fiscal administration.

Enactment.—Popular control over Great Britain's budget is safeguarded by four rules: (1) The Crown has sole initiative in expenditures. (2) The Commons may reduce but cannot increase estimates. (3) The Lords cannot amend—may only accept or reject the budget *in toto*. Rejections because of new land taxes led in 1911 to a new law which nullifies the veto power of the Lords. (4) No "rider"—enactment of extraneous nature—may be attached to the budget. In many countries it is a constitutional requirement that finance bills must originate in the lower house. Actual deliberation on the British budget occurs in committee of the whole house—only leaders actively participating—which makes discussion less formal. Decisions are later formally adopted by the House, committee action being representative, responsible, and decisive. In other countries, the budget committee is selected, less representative and responsible, its report merely a basis for deliberation by the whole house. Owing partly to resulting perfunctoriness, continental parliaments exercise less direct influence over the budget than the British. For convenience, the British budget is considered under about 250 "votes," that of France in over 700 chapters. Controversy and revision hinge about a relatively small part of the estimates—primarily those for army, navy, new services or taxes, and taxes used to adjust the yearly balance—except where withholding the budget becomes a constitutional weapon to coerce or dismiss a ministry (unrecognized in Germany). The British budget carries a "supplementary estimate" to meet any small deficit or unexpected expenditure. A "vote of credit" is the means to authorize emergency expenditures (war). On the continent, such unusual needs require subsequent enactment of additional credits or supplementary budgets—to the confusion and detriment of the finances. If the fiscal year begins before the budget is enacted, the usual custom is to make to the administrative departments, within strict limits, provisional grants on account to cover current expenditures.

Execution.—Budgetary law limits each expenditure to the amount and object specified. British balances are usually not transferable between "votes". A few carefully guarded exceptions exist: *e. g.*, Great Britain permits transfers within the same department for army and navy. British accounts close March 31, and complete the budget. These provisions taken together constitute an effective check on the administrative use of funds. French accounts remain open till all items pertaining to the year, includng additional credits, are entered and the budget closed by parliamentary act about four years later. This theoretic unity of the budget involves much sacrifice of administrative responsibility and parliamentary control. In each country, a special department, responsible directly to parliament, audits all accounts, exercises control over disbursements, and thus assures accurate execution of the budget.

See APPROPRIATIONS, AMERICAN SYSTEM OF; BUDGETS, FEDERAL; EXPENDITURES, FEDERAL; EXPENDITURES, STATE AND LOCAL; FINANCIAL POWERS, CONSTITUTIONAL; REVENUES, FEDERAL.

References: R. Stourm, *Le Budget, son Histoire et son Mécanisme* (5me éd., 1906); Paul Leroy-Beaulieu, *Traité de la Science des Finances* (8me éd., 1912), II, 1–205; W. Willgren, *Das Staatsbudget, dessen Aufbau und Verhältniss zur Staatsrechnung* (1899); C. F. Bastable, *Public Finance* (3d ed., 1903), VI, "The Budget of 1909" in *Econ. Journal,* XIX (1909), 288–93; H. C. Adams, *Sci. of Finance* (1898), Pt. 1, Book II; C. C. Plehn, *Introduction to Public Finance* (3d ed., 1911), Pt. IV; National Monetary Commission, *Report on Fiscal Systems of the United States, England, France and Germany* (1910).

E. H. VICKERS.

BUDGETS, FEDERAL

Definition.—In English practice the term budget refers to the annual presentation by the Chancellor of the Exchequer to Parliament of a financial statement of estimated receipts and expenditures and proposals whereby they may be met. As Bastable notes, there is a combination of a public balance-sheet and legislative act establishing and authorizing certain kinds and amounts of expenditure and taxation. In this sense there can hardly be said to be a budget in the American federal financial system. This is due to sharp division existing in this country between the executive and legislative branches of government. In England, the Chancellor of the Exchequer, a finance minister, directs and is responsible for all financial legislation in the House of Commons. In the United States the Secretary of the Treasury has the duty of making estimates, but plans for revenue and expenditures are framed and elaborated by Congress. The term budget, therefore, has not a precise and technical definition in American practice. It may refer simply to the estimates of receipts and expenditures or still more loosely to a statement of the balance sheet at the close of a fiscal year. As used in this article it applies to the making of estimates.

Fluctuations of Revenue.—It is difficult to present an orderly budget of the Federal Government because of the fluctuations in revenue. Customs duties depend upon imports, and these are influenced by foreign politics and domestic trade and industry. The range of annual receipts from customs at different periods has been, in even thousands, as follows:

	Minimum	Maximum	Difference
1791-1800	$ 3,343	$ 9,080	$ 5,737
1801-1810	7,257	15,845	8,588
1811-1820	5,998	36,306	30,308
1821-1830	13,004	23,341	10,337
1831-1840	11,169	29,032	17,863
1841-1850	7,046	39,668	32,622
1851-1860	41,789	64,224	23,435
1861-1870	39,582	194,538	154,946
1871-1880	130,170	216,370	86,200
1881-1890	181,471	229,668	48,197
1891-1900	131,818	233,165	102,347
1901-1910	238,535	333,683	95,148

There is a greater stability in internal revenue receipts, but these are subject to wide variations. During the last four decades these have ranged as follows:

	Minimum	Maximum	Difference
1871-1880	$ 102,410	$ 143,098	$ 40,688
1881-1890	112,499	146,498	33,999
1891-1900	143,422	295,328*	151,906
1901-1910	230,810	307,181	76,371

* Spanish War taxes.

Some of these fluctuations could be predicated with a reasonable degree of accuracy, for they were due to new taxes or to reduction in taxes already levied, but even during periods when there was no change in tariff or internal revenue schedules, marked variations in income occurred.

Fluctuations of Expenditures.—Expenditures also fluctuate, though not with such wide variation as do receipts. Excluding disbursements on account of the postal service, expenditures have ranged since 1870 as follows:

	Minimum	Maximum	Difference
1871-1880	$236,964,000	$301,239,000	$ 64,275,000
1881-1890	242,483,000	297,736,000	55,253,000
1891-1900	345,023,000	605,072,000	260,049,000
1901-1910	471,191,000	662,324,000	191,133,000

Surpluses and Deficits.—As a result of these fluctuations, it is impossible to make an orderly budget in advance. The result is a series of surpluses or deficits. Since the Civil War, nearly half a century, there have been only eight years when there was not either a surplus or deficit of more than $10,000,000. In eleven different years there has been a surplus of more than $100,000,000 and in three successive years there has been a deficit of over $50,000,000. Between 1900 and 1910 there were surpluses ranging from $7,479,000 to $11,421,000, and deficits ranging from $18,753,000 to $58,735,000.

Treasury Estimates.—An attempt is made by the Secretary of the Treasury in his annual report to present a budget which will show the estimated receipts and budgets for one and for two years in advance. The estimates of expenditures, however, are purely formal (*see* APPROPRIATIONS, AMERICAN SYSTEM), since little heed is given by Congress to the recommendations of the executive in regard to appropriations. There cannot, therefore, be that accurate prediction as to the balance of receipts and expenditures which is characteristic of European budgetary practice.

In 1908 the Secretary of the Treasury made estimates, including postal service, for 1909 as follows: Receipts, $788,799,000; expenditures $902,797,000. The actual receipts were $807,152,000, and expenditures $883,834,000. The deficit originally estimated at $114,000,000 was only $76,682,000. Receipts were underestimated a little over 2 per cent, and expenditures were overestimated by about the same rate. In submitting the foregoing estimates, the Secretary of the Treasury reported, "I regret the necessity of submitting them, for they are for the most part problematical. I have no means of knowing what will be the amount of the appropriations at the coming session, what will be the effect of the proposed revision of the tariff upon the revenue tariff from imports, nor

what will be the ultimate effect upon internal revenue collections of certain moral and economic movements which seriously affect these sources of revenue. It is little more than guess-work to give estimates of this kind."

In 1909 the Secretary of the Treasury made estimates for 1910 which were realized as follows:

	Estimate	Actual
Ordinary receipts	$648,000,000	$675,512,000
Ordinary disbursements	682,076,000	655,705,000
Deficit	34,076,000	----------
Surplus	----------	15,806,000
Expenditures for Panama Canal	38,000,000	33,912,000

An estimated deficit was therefore converted into an actual surplus. Under these conditions it is natural that Congress should pay little heed to budgetary statements when it wishes to make appropriations. The excess in receipts in 1909 from internal revenue was $16,000,000, from the corporation tax, $6,000,000, and miscellaneous sources, $7,000,000. There was a saving of expenditures in the War Department of $9,000,000 as well as a saving in the Post Office Department.

A Sample Estimate.—In some years, however, the results are nearer to the estimates. In 1905 the actual deficit was within $6,000,000 of what was estimated; and in order to illustrate treasury experience, details of this budget are presented. Customs receipts were about $1,000,000 less than estimated, internal revenue receipts $500,000 in excess, and miscellaneous receipts $2,000,000 in excess of the estimate. Receipts were, therefore, about $2,500,000 in excess of the estimate.

In expenditures the items to be noted were a deficiency in postal receipts $2,000,000 in excess of the estimate; expended on the Isthmian Canal, $1,000,000 more than estimated; on irrigation projects, $750,000 more than estimated; there was paid under an appropriation for French spoilation and other claims $750,000 more than estimated; the War Department expended on rivers and harbors $500,000 more than estimated; there was expended for the Indian service $1,300,000 more than estimated ($750,000 of which was an attorney's fee not anticipated); there was paid in pensions $1,750,000 more than estimated; and on interest $500,000 more than estimated. On the other hand, the Navy Department expended on constructive work about $4,500,000 less than estimated. Several smaller items of expenditure made up the difference.

Owing to lack of adjustment between revenue and expenditure, there is constant uncertainty as to whether there will be a deficit or a surplus. Treasury experts and financial students watch the daily treasury statements which contain a record of current receipts and payments. If receipts exceed payments, it is probable that deposits in banks will increase; if the reverse, that they will be withdrawn, or that it will be necessary to resort to loans.

Proposed Reform.—For many years the defects of existing methods of framing a budget have been recognized, but Congress has been averse to surrendering any of its privileges. In 1909 it did go so far as to provide by law that the Secretary of the Treasury, after receiving the estimates of expenditures of the several departments, should compare them with the estimated revenues. If they prove in excess, they are to be submitted to the President, who may recommend new sources of income or the authorization of loans. This, however, has led to no practical result and in 1912 and 1913, President Taft earnestly impressed upon Congress the need of new legislation. The Democratic majority in the House has hitherto declined to consider the adoption of the budget system.

See Appropriations, American System; Assessed Valuations, Comparative; Budgets, European System; Budgets, State and Local; Cost of Government in the United States; Expenditures, Federal; Estimates, Treasury; Financial Policy of the United States; Financial Statistics; Public Accounts; Revenue, Sources of.

References: F. J. Goodnow, *Comparative Administrative Law* (1893), II, 275, 295; E. I. Renick and N. H. Thompson, "National Expenditures" in *Pol. Sci. Quart.*, VI (1891), 248, VII, 468; *Am. Year Book, 1912* and *1913*.

Davis R. Dewey.

BUDGETS, STATE AND LOCAL

The opening paragraph of the article on Budgets, Federal (*see*), in regard to the use of the term budget in American financial procedure, applies here. The term will be used to include the operations involved in the preparation of revenue and appropriation bills. Considered collectively, there is no uniform budget system possessed by American states and cities. Not only do states, but cities within the same states, vary in their practice; nor is there material available which will enable a student to obtain a complete survey of all the methods in operation. The subject must, therefore, be considered by selecting a few examples as illustrations of general practice.

Constitutional Provisions.—Less than half the state constitutions require that bills for raising revenue shall originate in the lower house; and in only two states must appropriation bills originate in the lower branch. In

some states the scope of an appropriation bill is limited, that is, no appropriation bill except in a general appropration measure can contain more than one item. In Illinois no appropriation can be inserted in a private law; in Arkansas and South Dakota a two-thirds vote is necessary to pass an appropriation bill, and in Wisconsin there must be a three-fifths attendance of members to constitute a quorum for the consideration of revenue bills. In some states appropriations cannot be introduced after a certain date in the session, or if so, only by unanimous consent. Constitutions may prescribe a maximum tax rate; prohibit appropriations for religious purposes, or for institutions not under the control of the state; or forbid the legislature the power of making appropriations in excess of revenue provided.

Procedure.—Actual practice varies. In most states one committee has charge of appropriations, and another of revenue bills. In a few states both revenue and appropriation measures are centered in the same committee. Sometimes other committees have the right to report bills carrying an appropriation, with subsequent reference to the committee on appropriations, which takes final action. Generally the committee on appropriations consults various executive officers of the state government, and more particularly depends upon information given by the state auditor, or by some permanent official in his department. As but few states now have annual sessions, the budget must be framed two or three years in advance; and naturally the necessity of making appropriations for so long a period, to a certain extent, interferes with orderly financial procedure.

Budgets of Cities.—In general, there are two systems of local budgets; by the one the budget is prepared by the city council or board of aldermen; by the other, the initial steps are taken by a board of estimate or apportionment. Under the council plan, the departments submit to the municipal legislative body their estimates of needs; they may do this directly or through the intermediary agency of the mayor. The estimates are considered by one or more committees, and then acted upon, subject to the veto of the mayor. When representation in the council is determined by wards, there is likely to be log-rolling, particularly in securing grants for improvements. As a result, appropriations are made without regard to the advantage of the city as a whole. Certain departments of municipal administration, which do not receive adequate consideration, suffer financially; and expenditures are likely to be authorized in excess of current revenue.

Boards of Estimate.—To lessen this evil a plan has been adopted in many of the larger cities of entrusting to a board of estimate or apportionment the preliminary preparation. This board receives the estimate and makes the apportionment between the different branches of municipal service. In New York City this plan was adopted in 1871, not, however, in this case to secure a more orderly budget, but to give the notorious Tweed Ring greater power and opportunity. The board was composed of four members, all executive officials, the mayor, comptroller, commissioner of public works, and president of the parks department, and the legislative branch was practically deprived of all participation in making expenditures. In 1873 membership on the board was changed, the president of the board of aldermen and the president of the department of taxes taking the places of two of the executive officers, and later the counsel of the city corporation was added. In 1897 the new charter changed the membership to consist of the mayor, comptroller, president of the board of aldermen, and the presidents of the five boroughs. The first three, representing the city as a whole, are given three votes each; the boroughs of Manhattan and Brooklyn have two votes each, and the others one each. Heads of departments submit their estimates to this board and also are required to submit duplicate copies to the board of aldermen.

When the board has drawn up its budget based upon these estimates it must, within five days, present it to the board of aldermen, which must enter at once upon its consideration and take final action within twenty days. Reductions may be made, but no amount in the budget can be increased, nor new items inserted. Any reduction may be vetoed by the mayor, and unless the veto is overridden by a three-fourths vote, the amount originally fixed by the board of apportionment, stands. Authority is then given to raise by taxation the amount so voted plus three per cent to make good a possible deficit in the collection of the levy.

According to New York procedure the city votes its expenditures in advance of taxation, and in actual practice this works out badly. For more than half the year expenses are met by borrowing on revenue bonds issued in anticipation of taxes. As not all the taxes are collected, there has been for a number of years a regular series of annual deficits which in 1910 had reached a total amount in excess of $40,000,000.

In Baltimore, which also has a board of estimate, temporary loans to meet deficits cannot be authorized; and in case of deficiency there must be a pro rata reduction of all departmental appropriations. A surplus is available for expenditure in the next fiscal year. Detroit is another example of a city having a board of estimate. Its membership, however, is entirely separated from executive officials; it consists of two members elected from each ward of the city, and five elected at large. The board does not consider the budget until it has been acted upon by the council, and may at

their discretion reduce any item of appropriation or taxation.

Councils.—In Cleveland the departments submit estimates to the mayor, who may change any item but not increase the total. He in turn submits them to the council, which may reduce any item but not increase the total. The appropriations are made semi-annually instead of annually, thus giving the legislative branch greater control than is usually the case. The council determines the tax rate, but this is subject to revision by a board of tax commissioners, who serve without pay. If the levy is rejected, it cannot become valid unless repassed by a three fourths vote of the council. The ordinance making the levy must specify every purpose for which the levy is made and its percentage to the total, thus affording taxpayers exact knowledge in regard to the use which it is purposed to make of their tax payments.

In Chicago the appropriation bill must be made at the beginning of the year, and no subsequent grant can be made except by a majority of the voters at a general or special election. In New Orleans appropriations cannot be made in excess of 80 per cent of the estimated revenues; and in Philadelphia no appropriation can be honored by the comptroller until the total amount of the appropriations has been brought within the total of the estimated revenue.

Relative Merits.—Arguments in support of each of these two plans can be advanced. On the theory that good city government demands a concentration of power in the executive, a board of apportionment is declared to be a necessary agency; while on the principle that good government demands an able legislative council, it is necessary to give it real power, and not deprive it of effective financial initiative. The latter conviction is now held by experts who are interested in municipal reform. The *Program* of the National Municipal League entrusts to the council complete power as to taxation and appropriations. A fundamental defect in present procedure is found in the lack of intelligent reports and accounting (*see* PUBLIC ACCOUNTS). The estimates which are made by departments and which finally come before the council are generally blind. Taxpayers as well as the council are left in the dark; there is rarely opportunity for public hearings, and the result is a complete absence of popular control over the framing of the budget.

See APPROPRIATIONS, AMERICAN SYSTEM; ASSESSMENT OF TAXES; BOARDS OF ESTIMATE; COST OF GOVERNMENT IN U. S.; EXPENDITURES, STATE AND LOCAL; PUBLIC REVENUE, SOURCES OF.

References: A. R. Hatton, *Digest of City Charters* (1906); J. A. Fairlie, *Municipal Administration* (1901), 359–361; E. D. Durand, *Finances of N. Y. City* (1898), 131–134, 253–278; L. G. Powers, "Municipal Budgets and Expenditures,' in Nat. Municipal League, *Proceedings* (1909), 258–272; F. A. Cleveland, *Chapters on Municipal Administration and Accounting* (1909), esp. 67–81; E. L. Bogart, "Financial Procedure in State Legislatures," in Am. Acad. of Pol. and Soc. Sci., *Annals* VIII (1896), 236; "Studies in State Taxation," in Johns Hopkins Univ., *Studies,* XVIII (1909); H. C. Adams, *Science of Finance* (1898), Part I, Bk. II; *Am. Year Book, 1911,* 217, *1912,* 203, and year by year.

DAVIS R. DEWEY.

BUFFER STATE.—Term used to describe a state which for special reasons has been created or maintained between two states in order to prevent friction, as Roumania, Afghanistan, See BALANCE OF POWER AMONG NATIONS; DEPENDENT STATES; EQUALITY OF STATES; NEUTRALITY. PRINCIPLES OF. G. G. W.

BUILDING ASSOCIATIONS. Originating in England, the building association entered the United States about 1831 and attained striking development from 1878 to 1898, and then slightly declined. It combines, on mutual coöperative principles, the functions of savings, investment and loan banks, primarily for persons of moderate income. Its vital principle is to afford facilities whereby members may, as investors, convert small weekly or monthly savings into profitable investments, or, as borrowers, repay their loans in small regular instalments. Regular instalments and accrued profits aggregate a previously fixed par capital, which is then returned to an investor or used to liquidate the loan of a borrower. Like "Peoples' Banks" in Europe, the building association utilizes small savings as collective funds for making loans to its members, on terms more advantageous than otherwise obtainable. Unlike "Peoples' Banks," it rarely makes loans on individual or collective credit; but insists on satisfactory security, chiefly real estate at a safe valuation. In the local association—few national associations succeed—the gratuitous and efficent services of directors acquainted with borrowers and property values raise profits and inspire popular confidence. Though devised to facilitate the acquisition of homes, of late the tendency has been to use it more for investments, funds being loaned wherever secure, even to non-members. See BANKING, PUBLIC REGULATION OF; BANKS, COÖPERATIVE LOAN; BANKS, SAVINGS. **References:** G. W. Hanger, "Building and Loan Associations in the U. S." in Bureau of Labor, *Bul. No. 55* (1904), 1491–1572; Commisisoner of Labor, *Ninth Annual Report* (1893); J. H. Hamilton, *Savings and Savings Institutions* (1902), ch. iv; F. A. Cleveland, *Funds and their Uses* (1905), ch. xi; statistics in U. S. Dept. of Commerce, *Statistical Abstract of the U. S.* E. H. V.

BUILDING LAWS

Colonial Laws.—The need for regulating building construction in the colonies was made evident at an early date by the conflagrations which from time to time destroyed whole villages. "An act for the more effectual prevention of fires and for regulating of buildings in the City of New York" was passed in 1761, and provided that "every building that shall be erected after January 1, 1766, in the city south of 'Fresh Water' should be made of stone or brick and roofed with tile or slate." An early colonial law prohibited the construction of "wooden chimneys lathed and plastered on the inside." All the earlier building legislation was naturally a development of conditions arising from the one story, or at most two story house.

Establishment of Fire Limits.—As the result of many great conflagrations ending in that in Chicago in 1871, it became common to prescribe for American cities what were called "fire limits" within which it was prohibited to build enclosing walls and roofs of inflammable material. These limits were extended from time to time to follow expanding city areas. The Baltimore fire of 1909 showed that the idea itself needed development. It was suggested that the larger cities adopt a scheme of three fire zones within their areas; within the inner there should be nothing but entirely fireproof buildings; in the next surrounding area towards the suburbs none but buildings with non-inflammable walls; in the third and outer area inflammable exterior walls might be constructed, but with non-inflammable roofs and other protective features to prevent the rapid spread of fire.

In many modern suburban communities rows of wooden houses touch each other in street after street. Industries creep in, the factory and the shop, and the whole group in turn becomes part of a conglomeration of such groups. To prevent conflagrations in these over-grown wooden villages, the "fire wall street" (not yet incorporated in any law) is as yet the most hopeful suggestion. It would prohibit the erection of inflammable buildings on certain streets, which should traverse dangerous areas at right angles, and thus cut the dangerous area into sections isolated from each other.

Impulse towards Legislation in the Past.—As a result of great loss of life in theatres in Brooklyn and Vienna special types of protection and construction were prescribed about 1886 for such structures, and for halls of assembly. Apparently all advances in protective legislation follow some disaster and have to overcome the opposition of private interests. Manufacturers have attempted to secure in building codes specification of certain materials and the exclusion of other material. The favored material was given a preference as to weight, strength, or the method of application. Thus in 1888–90 the long established iron foundries tried to maintain their control of structural iron work at the expense of the rapidly invading and superior structural steel products.

In connection with the great losses of life and property by fire, changes in building laws in recent years have been aided by the mutual insurance companies of New England towards the development of a better type of factory construction; and by the National Board of Fire Underwriters towards standards for all forms of fire resisting devices. The recommendations of these two institutions have been far in advance of state and local legislation. The insurance companies have secured compliance with underwriters' standards only through the imposition of prohibitive insurance rates on sub-standard construction. The mutual companies have enforced their rule by refusing to insure defective structures on any terms. It is now generally realized (and particularly by manufacturers) that a fire insurance company must in the long run charge a sufficient premium to cover its losses; the property owner therefore pays a rate due to the losses on his neighbor's property as well as his own. Such devices as automatic sprinklers first encouraged by the mill owners' (mutual) associations have proven not only successful as property protectors but also as life protectors. So far as recorded, no life has ever been lost in a fire in a structure protected by sprinklers, yet up to the present time building codes have but in a few cities required sprinklers in buildings of any type.

Special Tenement House Legislation.—In certain cities (New York and St. Louis for instance) popular movements for special state legislation have been started for the improvement of poorer class dwellings, based on the belief that local ordinances could never be enforced against small property owners so as to effect necessary reforms. These movements have resulted in the adoption of separate tenement house laws (state laws instead of local ordinances) administered in each city under a commissioner appointed by the mayor. These laws are drastic and practically necessitate the razing of certain types of old houses which cannot be made to provide the required air space and other sanitary provisions. After a long fought legal battle these so-called confiscatory measures have been upheld as being within the police powers of the state, designed

as they are to protect the health of its citizens. The result of such special tenement house legislation has undoubtedly proved it in every respect beneficial.

State Building Codes.—Building legislation has, on the whole, until very recently been confined to local ordinances rather than state laws. With the growth of small and separate communities into the larger metropolitan districts it has been realized in some states that local ordinances must be based on general state-wide laws. Ohio adopted a state building code in 1911, and Pennsylvania and Illinois through state commissions are at this time (1913) working on the preparation of such codes. It appears desirable that state building codes should be drawn so as to call for the more complex forms of protection only where structures are erected of a dangerous type or where built in proximity to other buildings so as to make an "exposure hazard." It must be evident that a four story wooden factory building is actually more exposed to destruction in the open country than within the limits of a city where there is at least fire department protection.

The High Factory Building.—The growing problem of the factory in the city has been the subject of some legislation in recent years. The rise in the value of city property has a tendency to drive factories into the suburbs. For the "seasonal" trades, particularly, the factory apparently needs the advantage that a congested area offers, the advantage of a large supply of surplus labor. The problem of the high factory building has been brought about by these causes. In recent years the average factory built within the congested areas in New York is ten stories high. There has been appalling loss of life in such structures through conflagrations. A state factory investigation commission and a local "commission on congestion of population" have studied the problem, but for the time being the high factory buildings continue to increase and worse conditions prevail in some of them than in the tenement house factories (*i. e.*, sweat shops) which to a certain extent they have superseded. It seems likely that efficient control of conditions will only be secured with enlarged powers given by the state into the hands of either state or municipal departments of public safety for the control of all measures for health, fire prevention and safe construction. In New York City an official commission is now engaged (1913) in studying the question of regulating and limiting the height of buildings.

Present Influences Towards Progress.—The standards of the best building practice have always been in advance of building laws in the United States. Unfortunately such standards have rarely been considered in the framing of our laws. The work inaugurated by the National Board of Fire Underwriters and the mutual insurance companies and now carried on by the National Fire Protection Association has been important mainly in that it has secured improved methods of construction not by process of law but rather by forcing upon the community the realization of the economic value of the standards established, through establishing reduction of insurance rates and demonstrating to property owners the higher productive value due to longer life and lower maintenance and repair charges.

The most hopeful recent sign in certain sections of the country has been the coöperation of experts interested in life and fire protection towards the adoption of good building codes. The American Institute of Architects has a committee at work for this purpose in conjunction with the National Board of Fire Underwriters. In New York (1911–12) a joint committee composed of fire underwriters, engineers, architects, builders and structural engineers was working to secure proper building laws and ordinances uninfluenced by private interests; to submit them clearly and fairly to all interested civic associations and then to demand their adoption. By such means an approach is made to the conditions which obtain in certain parts of Europe where associations of architects and engineers draw up the codes which the state authorities by edict adopt. It is only through such expert bodies, to which our legislators may some day look for guidance, that the law can be made to meet the constantly varying conditions brought about by new materials and new methods of construction. In this country it has been rare to find legislatures willing so to place technical matters in the hands of technical men. The recognition of the importance of such action is none the less the greatest need to-day in the field of building law legislation.

See Drainage; Fire Limits; Health, Public, Regulation of; Hotels and Lodging Houses, Regulation of; Model Dwellings; Municipal Housing; Nuisances, Abatement of; Public Morals, Care for.

References: *Colonial Laws of New York* (1896), I, 269, IV, 571; Factory Mutual Companies, *Publications* (esp. 1884–1893, 1901–1903); National Board of Fire Underwriters, *Building Code, Recommendation* (2d ed., 1907); Nat. Fire Protection Assoc., *Publications*; *Am. Year Book, 1911,* 244, and year by year. Robert D. Kohn.

BULL MOOSE. Name applied to Theodore Roosevelt in the campaign of 1912. It arose from his remark: "I feel as fit as a bull moose," which was taken up by cartoonists and quickly became the emblem of the Roosevelt combination and then of the Progressive Party (*see*), popularly known as the "Bull Moose Party." The animal was useful alongside the elephant (*see*) and the donkey (*see*), as a recognized pictorial emblem. A. B. H.

BULLION. Bullion is gold and silver in uncoined form. Gold bullion may be deposited at the mint to be formed into coin or bars, provided that its value be not less than $100 or "so base as to be unsuitable for the operations of the mint." In mint practice, therefore, bullion generally refers to metal which in purity or fineness approximates to the legal standard prescribed under the coinage laws. In order that payments may be made promptly to depositors of gold, a bullion fund is kept. As gold certificates are now issued against gold coin, directors of the mint have repeatedly, since 1902, advocated that coinage be omitted and certificates be issued directly against the bullion, thus saving the expense of minting the gold coinage.

In English monetary history frequent reference is made to the Bullion Report, made by a committee of the House of Commons in 1810, in which the disturbance in the exchanges (foreign) was attributed to an excessive issue of bank notes. See COINAGE AND SPECIE CURRENCY. D. R. D.

BUNCOMBE, SPEAKING FOR. An expression indicating speaking for the effect upon persons at a distance, or for popular effect; said to have originated about 1820 from a statement of Felix Walker, a Congressman from Buncombe County, North Carolina, in a speech in Congress in which he said no importance need be attached to his remarks in that he was "only talking for Buncombe."

O. C. H.

BUNDESSTAAT. A German term employed to indicate a political form, created by the union of several independent states into a single, sovereign, joint state, possessing a federally organized state power. Examples, modern Germany (*see*), Switzerland (*see*), and the United States. See FEDERAL STATE; STATES, CLASSIFICATION OF; UNITED STATES AS A FEDERAL STATE. B. E. H.

BUREAU. See following bureaus by name: ACCOUNTS; ANIMAL INDUSTRY; APPOINTMENTS; EDUCATION; CHEMISTRY; CITIZENSHIP; CONSTRUCTION AND REPAIR; CORPORATIONS; ENTOMOLOGY; FISHERIES; FOREIGN AND DOMESTIC COMMERCE; IMMIGRATION; INDEXES AND ARCHIVES; INSULAR AFFAIRS; MEDICINE AND SURGERY; MINES; MUNICIPAL REFERENCE; MUNICIPAL RESEARCH; NATURALIZATION; NAVIGATION; ORDNANCE; PLANT INDUSTRY; PUBLIC HEALTH SERVICE; ROLLS AND LIBRARY; SOILS; STANDARDS; STEAM ENGINEERING; SUPPLIES AND ACCOUNTS; TRADE RELATIONS; YARDS AND DOCKS.

BUREAUCRACY. Strictly speaking, a bureaucracy is a form of political organization through which government is administered by bureaus, each being vested with the management of a particular branch of state business. Each bureau is hierarchically organized with a chief at the top, in whom the final responsibility is vested. Usually a regular system of appeals lies from the decisions of each administrative official to the one superordinated to him, the final power of determination resting with the head of the bureau. Such a method of organization contrasts with the collegial or board system in which the ultimate responsibility is not centered in a single head but is divided between a number of persons of coequal authority. The chief merit of the bureaucratic form of organization is that it is admirably adapted to securing responsibility. Moreover, the officials are usually trained and experienced administrators. In the opinion of John Stuart Mill the only non-representative governments in which high skill and ability have been common have been essentially bureaucracies. They "accumulate experience," he said, "acquire well-tried and well-considered maxims and make provision for appropriate practical knowledge in those who have the actual conduct of affairs."

Bureaucracies, however, have never been popular and with the spread of democratic ideas they have lost much of their old-time character. They tend to develop a caste spirit, they are little affected by public opinion, and the government as administered by them tends to become one of men rather than of laws. Bureaucracies are also criticised for their excessive formalism and their tendency to overemphasize administrative routine, and to sacrifice substance to form. They become victims of routine and "red tape." In short, they tend to become "pedantocracies." Finally, they are not favorable to the stimulation of popular interest in public affairs or to the cultivation of habits of loyalty or patriotism among the masses.

References: J. Bachem, *Staatslexikon* (1901–04), I, "*Bureaucratie;*" J. W. Garner, *Intro. to Pol. Sci.* (1910), 7–13; F. J. Goodnow, *Comparative Administrative Law* (1903), II, ch. vi; J. S. Mill, *Representative Government* (1872), ch. vi; H. Gagern, Rotter and Welcher's *Staatslexikon*, III, 178–220.

JAMES W. GARNER.

BURKE, EDMUND, POLITICAL THEORIES OF. See POLITICAL THEORIES OF ENGLISH PUBLICISTS.

BURR, AARON. He was born in Newark, N. J., February 6, 1756, and died September 14, 1836. He was graduated from Princeton and studied law. Having won success as a lawyer in New York city, he was elected, 1791, to represent New York in the United States Senate. By his ability for political intrigue he created one of the first political machines in New York, overcame the influence of former leaders and in the election defeated General

Philip Schuyler. Failing of reëlection he entered the New York legislature and served two terms. In the election of 1800, he was accused of attempting to defeat the will of the people in allowing his name to be presented for the presidency, and lost his prestige among the Republicans. By a combination with the Federalists, 1804, he hoped to be elected governor of New York, but was defeated through the influence of Hamilton. After killing Hamilton in a duel Burr became an outcast. It is not certain what he dreamed of accomplishing in the undertaking which he entered upon, 1805–1806, the separation of the West from the Union or a revolution in Mexico with the thought of becoming king. General Wilkinson in defiance of a writ of habeas corpus, held prisoner one whom he believed in the conspiracy and a special message from President Jefferson to Congress in vain demanded the passage of an act suspending the writ of habeas corpus, in certain cases, for three months. Burr was acquitted of the charge of treason but thenceforth lived in obscurity. See BURR CONSPIRACY; DEMOCRATIC-REPUBLICAN PARTY; HAMILTON, ALEXANDER; INSURRECTION; NEW YORK; TREASON. References: M. L. Davis, *Memoirs of Aaron Burr* (1836); W. F. McCaleb, *Aaron Burr Conspiracy* (1903); James Parton, *Life and Times of Aaron Burr* (1858).

J. A. J.

BURR CONSPIRACY. Aaron Burr was Vice-President of the United States from 1801 to 1805. On his retirement from office and after his duel with Hamilton (*see* HAMILTON, ALEXANDER) he appears to have been ready for almost any thing that would give him some excitement or add to the slender contents of his purse. He was then, what he continued to be most of the rest of his life, a needy, unscrupulous adventurer. In 1805 he made a trip down the Ohio and Mississippi, perhaps to spy out the ground, though he told Andrew Jackson at that time that he intended to drive the Spaniards from America. On his return from this trip he began preparations for another expedition of a similar nature and attempted to raise funds for the expedition from the English and Spanish ministers in Washington.

Historical scholars have made most careful research into the subject, but are not yet quite positive what his conspiracy was. There is strong evidence that he planned to separate the western states from the Union and set up a republic or a kingdom in which he doubtless expected that Aaron Burr would be the most conspicuous personage. On the other hand there is evidence that his whole scheme was to make a filibustering expedition against the Spaniards in Mexico and possibly win for himself the throne of the Montezumas. He had, in fact, plans for different occasions, one of them being to purchase lands on the Washita, a comparatively harmless propositon, which was probably not more than a blind. At this time (1806) he interested various people in the West in his undertaking, and finally aroused the suspicion of President Jefferson and the administration. General Wilkinson who had been one of Burr's confederates finally turned against him and Burr was arrested (1807). He was released, then arrested again and taken to Richmond for trial. The trial, which was conducted in the federal court, with Chief Justice Marshall on the bench, was a sensational affair; for the administration was determined to convict Burr of treason and Jefferson respected the fairness of Marshall whom he always disliked. Burr was acquitted September 1, 1807. Marshall held that the evidence did not show that he had been actually engaged in levying war upon his country, basing his decision on Art. III, Sec. iii, ¶ 1, of the Constitution.

The whole matter, as we have already said, is still shrouded in some mystery. Evidently men were being enlisted for some sort of an expedition, but whether to be used for a dissolution of the Union or to attack Spain is not entirely evident, and possibly Burr himself was, to the end, undecided as to just what he would try to do. See BURR, AARON. References: E. Channing, *Jeffersonian System* (1906), ch. xii; H. Adams, *Hist. of U. S.* (1890–91), III, chs. x–xiv; W. F. McCaleb, *Aaron Burr Conspiracy* (1903); bibliography in Channing, Hart and Turner, *Guide to the Study and Reading of Am. Hist.* (1912), §§ 186–188.

T. N. HOOVER.

BURRITES. That faction of the Democratic-Republican party (*see*) in New York State which supported Aaron Burr (*see*), from about 1797 to 1807, in opposition to the regular, or a Jeffersonian, branch of the party. See BURR, AARON; DEMOCRATIC-REPUBLICAN PARTY.

O. C. H.

BUSHWHACKER. In 1861 armed prowlers lurking in the woods of Missouri and forcing their way through thickets to fight or take spoil by ambush or surprise were called bushwhackers. General Schofield reported that in winter "the absence of leaves from the brush made it impossible for the bushwhackers to hide from the troops"; and they were subject to unrelenting pursuit and summary execution at all seasons. They were denounced as murderers, horse-thieves, and jayhawkers and punished as brigands; but the operations of Confederate partisans entitled to belligerent privileges were also sometimes treated as bushwhacking. See GUERRILLAS; MILITARY DISCIPLINE; VOLUNTEER. References: U. S. War Department, *Military Laws* (1908), 1085; *Official Records* (1880–1901), Series I, XXII, 65, 378, 451, 483, XLIII, ii 923; *ibid*, Series II, V, 591, 647.

C. G. C.

BUSINESS, GOVERNMENT RESTRICTION OF

Principles.—Jefferson's idea of proper government was that it should be confined to a few public functions, such as defense, external relations, and the maintenance of courts of justice, that is to things which manifestly could not be done by private initiative. He thought the Indian tribes had the best, because the simplest, government. His objection to the United States Bank in 1791 was not simply against that federal agent, but also against any power unnecessary to the continuance of the state. Even Jefferson recognized that, through its authority to adjust private disputes by public tribunals, the state must influence and frequently control the conduct of private affairs. Nobody denies that, through rules of law laid down in statutes or deduced from the common law, both federal and state governments constantly regulate the descent of property, sales, exchange, passing of title, negotiable paper, and other business.

Far beyond this simple and inevitable restraint lies a series of purposeful governmental restrictions, some familiar in English and colonial times, some grown up since the Revolution. These may be analyzed into the following groups: (1) restrictions based on the police power, particularly on moral grounds; (2) restrictions on the organization of business; (3) restrictions on transportation; (4) restrictions as to personal service; (5) standards of exchange; (6) restrictions on profits; (7) banking; (8) insurance.

Police Restrictions.—Throughout the colonial period business was carried on in a simple way by individuals or partnerships, the chief business subject to state interference being inn keeping: most colonies and local governments passed ordinances on the responsibility of houses of public call, particularly with regard to selling alcoholic beverages. In some colonies licenses were necessary upon a theory something like the modern Gothenburg system (*see*) of putting the business in the hands of responsible people; but there was a great body of detailed restriction as to hours, persons to whom liquor might be sold, and good order. This principle has been very widely extended in modern times so as to include not only liquor sellers, but many kinds of business which formerly were lawful. Lotteries, for instance, long a source of revenue to colonies, public institutions and even churches, are now prohibited in every state in the Union. Gambling, which is still a polite amusement, is prohibited in most of the states, and gambling debts are legally uncollectible. The business of taking bets on public events, particularly horse races, is also in most states a prohibited pursuit. It has been found necessary specifically to describe and prohibit certain forms of business, such as the so-called white slavery (*see*). The tendency is constantly to enlarge the list of commercial transactions which are absolutely prohibited.

Restrictions on Organization.—The private trader with no associates, experiences little in the way of governmental inquiries into his records and processes. Like all other business men he must submit to taxes, and if he manufactures a taxable article may be called upon to make statements of his products or sales as a basis of assessment. In practice most such transactions are covered by a system of stamp duties; but manufacturers of spirituous liquors, tobacco, and oleomargarine, are subject to government inspection. The firm, a very old method of combining capital and business ability, is subject to general prescriptions as to the method of announcing combined responsibility, authority to sign the firm name, responsibility for the firm's debts, and the status of silent partners. Business by corporations (*see*), which possess special privileges and particularly the right of limited liability, is more seriously regulated; except insurance companies and three private banks, there were practically no such corporations in the country previous to 1789, but they now number hundreds of thousands. Originally chartered by special acts, most of them are now organized under general statutes, which prescribe the form of organization and methods of expressing the will of the stockholders. By these laws, also, a liability is set forth, commonly the amount of the stock held by each individual, and an equal amount in addition. Of late years the laws have been more and more stringent with regard to the records and accounts of corporations; and the rules for assessment of the federal corporation tax of 1909 require corporations to furnish annually a statement of their conditions to the federal Bureau of Corporations. The tendency of modern legislation is to regulate capital stock, in many cases to limit dividends, and to require publicity of transactions and accounts. An effort has been made to require all corporations to take out a federal charter.

Restrictions on Transportation.—No field of business is so systematically regulated by the state as transportation. The most common avenues of transportation—wagon roads and waterways—are state property, or at least the right to pass over them is subject to the will of the state. Wheel traffic in city or country, and navigation on rivers, lakes or sea, are carried on under minute restrictions, fed-

eral, state and local. In addition, private means of transport, particularly railroads, are almost all conducted by corporations, and therefore subject to restriction. In addition they are held to be engaged in a quasi-public pursuit, and therefore must submit to governmental regulations which every year become more extensive. Rates and methods of operation, facilities and protection of life and property in transit, are subject not only to legislation and to judicial control, but also to special administrative bodies both state and national. External commerce has the additional restraint of a system of duties on imports, and of laws as to immigration. One business, once respectable and long permitted, has been absolutely prohibited since 1808, namely the slave trade. The transport of some other commodities is prohibited or closely regulated, as carrying of explosives. Through its control of the mails the United States exercises a far-reaching control over several sorts of business, for instance, the sale of obscene literature and the correspondence of fraudulent enterprises (*see* FRAUD ORDERS OF THE POST OFFICE). By its ordinary mail service it assumes a monopoly of that kind of forwarding, and by its parcel post (*see*) competes for other transportation, and its postal savings bank (*see*) rivals private enterprises.

Standards of Exchange.—A business restriction of great importance consists in subjecting the sale and transport of goods to standard weights and measures. Official sealers are expected to confiscate measures or weights which do not correspond to the law, and to prosecute fraudulent uses. Still more significant is the requirement that transactions shall be carried on in a standard currency. There is no legal prohibition of contracts in sterling or for the exchange of one kind of commodity for another; but in practice all accounts, money liabilities, and invoices in interstate commerce, and in intrastate commerce, are expressed in dollars. The second legal tender decision of 1871, together with the case of Juillard *vs.* Greenman (1884), established the right of Congress to decide what is meant by a dollar; and every business man is bound to receive certain paper notes of the United States as legal tender (*see*) for debts.

Restrictions on Profits.—The whole doctrine of competition assumes that a business man will make as good a bargain as he can; the protection of the public being the expectation that the other party will make no bargain that he does not think advantageous to himself. In non-competitive businesses like modern railroads and traction lines, and in any business where the great part of the product can be controlled and therefore the prices fixed by one agency, this theory breaks down; and there have been numerous cases in recent years where a legislature, particularly in the case of reorganizations of corporations, has laid down the amount of profit which can be set aside for stockholders. Though this restriction is often nullified by stock dividends and similar transactions, there appears to be a general public feeling that six per cent is a fair profit and that profits above that amount should, in some form, be saved to the public.

A special case of restriction of profits is the system of usury (*see*) laws, by which a legal rate of interest is fixed, varying in different states from six to twelve per cent; by the statutes of many states, no agreement to pay interest above the legal rate can be enforced by law; and the payment of principal plus legal interest constitutes a discharge of the obligation. These provisions are everywhere avoided by discounts, bonuses, fines, renewal charges and simulated purchases (*see* MONEY LENDING).

Banks.—Two lines of business have from their inception been subject to special government regulation; banking and insurance. The only bankers of the colonial period were the regular merchants, and to this day American private bankers have never had the privilege of note issues, and are little disturbed in their ordinary business of discount, deposit and exchange. Private banks in New York have, since June 21, 1911, been regulated because there have been many cases of fraud perpetuated on alien residents. Most of the public regulation of banking applies to incorporated joint stock banks. Their function of issuing notes is subject to state law, which, however, has been practically obsolete since 1865, when the United States laid an annual tax of ten per cent on the notes of state chartered banks. The national banks are subject to a minute and rigorous system of regulation, including maintenance of reserves, limitation of loans to officers of the bank or in undue sums to any one, and subjection to frequent inspection by government officials. No line of business in the country is so thoroughly subject to state regulation. The savings banks (*see*) are also carefully restricted and supervised as to their investments, rate of interest, management and dead accounts.

Insurance.—Insurance (*see*), beginning with marine companies, speedily developed into fire companies, and then into life and later into accident and guaranty companies. In theory and practice this is a recognized subject for state intervention. Except within its special territorial domains, the Federal Government has so far taken no responsibility for such companies; but the states have elaborate codes of insurance laws and most of them maintain a special department of administration to supervise the system. Systems of state insurance have begun to appear.

See BANKRUPTCY; BILLS OF RIGHTS; CENTRALIZATION; COMMERCE, GOVERNMENTAL CONTROL OF; CONTRACT, IMPAIRMENT OF; CORPORATIONS; DUE PROCESS OF LAW; INSPECTION AS A

FUNCTION OF GOVERNMENT; LIBERTY, CIVIL; LIBERTY, LEGAL SIGNIFICANCE OF; MONOPOLIES; PATENTS TO INVENTORS; POLICE POWER; POWER FOR INDUSTRY; PRICES AND CHARGES; PROTECTION; PUBLIC - SERVICE COMMISSIONS; STATISTICS, OFFICIAL COLLECTION OF; TRUSTS; VESTED RIGHTS; WEIGHTS AND MEASURES, STANDARD OF.

References: A. B. Hart, *National Ideals Historically Traced* (1907), ch. xiii, *Actual Govrnment,* (rev. ed., 1908) ch. xxvii; C. A. Beard, *Am. Gov. and Polit.* (1910), ch. xix; F. J. Stimson, *Popular Law Making* (1910); R. T. Ely,. *Evolution of Industrial Society* (1906); *Am. Year Book, 1910,* 317, 396, and year by year; E. A. Seligman, *Principles of Economics* (1909), chs. vi, vii; James Bryce, *Am. Commonwealth* (4th ed., 1910), II. ch. cvii; bibliography in A. B. Hart, *Manual* (1908), § 120; U. S. Industrial Commission, *Reports* (19 vols., 1900–1902). ALBERT BUSHNELL HART.

BUTLER, BENJAMIN FRANKLIN. Benjamin F. Butler (1818–1893) was born in Deerfield, N. H., November 5, 1818. He began the practice of law in 1840, at Lowell, Mass., and rose rapidly to prominence as a criminal lawyer. He joined the Democratic party, sat in the Massachusetts house in 1853 and in the senate in 1859, and was a delegate to the Democratic National Convention at Charleston in 1860. On the outbreak of the Civil War he was commissioned brigadier general of volunteers, protected the route to Washington, invented the term "contraband" to cover fugitive slaves, and in May, 1862, became military commander of New Orleans after Farragut's capture of the city. His administration evoked severe criticism, not wholly unmerited, and he was credibly accused of profiting by trade across the line. For his conduct at New Orleans Jefferson Davis proclaimed him an outlaw. In 1864 he held commands in Virginia and North Carolina, but showed little military ability and his course was unsatisfactory to Grant. In January, 1865, he was relieved. He represented Massachusetts in the House, as a Republican, 1867–75 and 1877–79, and was one of the managers of the Johnson impeachment. In 1882 he was elected Democratic governor of Massachusetts, and in 1884 was nominated for the presidency by the Antimonopoly and Greenback parties. He died at Washington, January 11, 1893. See CONTRABAND, NEGROES; NEW ORLEANS. **References:** B. F. Butler, *Autobiography and Personal Reminiscences* ["Butler's Book"] (1892); J. Parton, *General Butler in New Orleans* (1863); H. G. Pearson, *Life of John A. Andrew* (1904). W. MACD.

BUTTERNUTS. A nickname given the northerner who sympathized with the South during the Civil War. Also applied to the Confederate soldier because of the "butternut" color of his homespun uniform. See COPPERHEADS. O. C. H.

BY-ELECTION. A British political term used to signify an election held to fill a vacancy in Parliament, in contradistinction to a regular election held following a dissolution of Parliament. See HOUSE OF COMMONS; NOMINATIONS IN GREAT BRITAIN. O. C. H.

BY-LAWS. In the United States the term by-laws has come to be applied universally and almost exclusively to the regulations, rules or other enactments, adopted by private corporations and other voluntary associations for their own government. In England it is uniformly applied to the ordinances or regulations of municipal corporations as well, and to some extent this was true in the early days in the United States. Generically considered, by-laws include all rules, regulations or ordinances adopted by the corporation or association itself, for the government of its own affairs and the regulation of its relations with its officers, members and employees, their relations with each other and with strangers, though the term, regulations, is sometimes applied to rules for the last-named purpose. The so-called constitutions of private corporations, as distinguished from their charters, are, therefore, essentially by-laws rather than organic laws. In practice, corporation constitutions differ from by-laws, in that the former are adopted by all the members, whereas the latter may be adopted by the governing board or officers, by virtue of authority given to them by the charter, or delegated by the members. Frequently, also, corporate constitutions contain the more important and general provisions; and stricter formalities and conditions are required for their repeal or amendment than is the case with by-laws. The charter is granted by the state, the constitution and by-laws are adopted by the corporation.

Though the power to adopt by-laws is usually expressly given, it is incident to corporate existence, and except as otherwise expressly provided in the charter or general law, the scope of the power is limited by the nature, purpose and necessities of the corporation. A valid by-law is as binding upon the corporation and its members as its charter or as any public law. The binding effect upon third parties, and their right to establish legal claims, through by-laws, depend upon the general principles of statutory and common law applicable.

See CORPORATION CHARTERS; LEGISLATURES AND LEGISLATIVE PROBLEMS IN CITIES; ORDINANCES, MUNICIPAL; TOWNS AND TOWNSHIPS.

References: L. Boisot, *By-Laws* (2d ed., 1902). H. M. B.

BY-LAWS OF RURAL ORGANIZATIONS. See TOWNS AND TOWNSHIPS, BY-LAWS OF.

C

CABINET GOVERNMENT. The essential characteristic of cabinet government is the union in a collegiate ministry of the supreme direction of both legislation and administration. The system violates the doctrine of the separation of powers which is the basic principle of congressional government (*see*). The Cabinet is the dominant power in the state. It is the main shaft to which all the other mechanism of government is geared. Bagehot describes it as "a hyphen which joins, a buckle which fastens, the legislative part of the state to the executive part of the state." In this type of government the ministry performs three chief functions. It is: (1) the head of the administration, the various departments of which are under the direction of its several members; (2) the controlling and directing committee in the legislature, responsible for the initiation and passage of all important laws; (3) it constitutes the policy-forming organ of the state, the agency which forms and shapes the will of the state with respect to important lines of action, both internal and foreign.

Ministerial Responsibility.—In the cabinet system, the head of the state, in whose name all acts of government are performed, is legally irresponsible. The ministers, by countersigning or otherwise attesting their approval of the actions taken in his name, assume all responsibility for them. They thus become the effective agents of all the authority which is theoretically vested in him. This responsibility which the Cabinet undertakes for all governmental acts is enforced by the representative body through votes of censure or lack of confidence, or by defeating important proposals to which the ministry is committed. In the face of such expressions of censure the Cabinet must either resign or appeal to the electorate by ordering the dissolution of the existing legislature and a new election. The responsibility is collective and not merely individual; the ministry stands or falls as a unit. This collegiate solidarity is secured through the Prime Minister who is the keystone to the cabinet-arch. He selects his colleagues, enforces harmony and concert of action among them, and his retirement always involves their resignation also. In the cabinet system ministers always enjoy the right of appearing in the legislative chambers and of discussing measures which are under consideration; they are, indeed, usually members of the legislative body. In large degree they take the place of the numerous committees which, in congressional government, are the instruments of legislative initiation and control. Most of the important legislative proposals emanate from them, and even with respect to those introduced by private members they can exercise an effectual control by making them questions of confidence in the ministry. Their presence on the floor of the legislative chambers also affords opportunity for these bodies to bring the entire field of administration under review by means of parliamentary questions and interpellations put to the ministers in open session.

Advantages.—The advantages of cabinet government have often been urged. As compared with congressional government it embodies the principles of unity and simplicity. There is no need of an elaborate system of "checks and balances" (*see*). Instead of dividing power among various organs, all of which are left without effective control, cabinet government concentrates authority in one organ which is subjected to the strictest and most minute responsibility. It is, therefore, a strong and efficient form of government. In an emergency there is almost no limit to the power which the ministry may exercise. In normal times it accomplishes its purposes with ease and dispatch. Legislation assumes the aspect of an orderly and logical program. A systematic budget is likewise a natural characteristic of government which concentrates power in the Cabinet. As a result this system of government is not likely to be subject, in serious degree, to the evils of "log-rolling" and "lobbying."

Conditions for Success.—Cabinet government is not, however, a type which can safely be introduced in every country. It implies certain fundamental conditions, and has, in fact, operated with real success only in Great Britain and her self-governing colonies. The cabinet system is intimately connected with party organization and activity. It presumes the existence of two, and only two, parties, one of which habitually supports the ministry, the other being in constant opposition. In effect it is government by the leaders of the party which is in the majority in the representative body, checked and controlled by the minority party, whose leaders are ready to assume the responsibilities of government if the existing ministry can be forced to resign. In its normal and perfect form the system implies an alternation in power between the two

parties. The line of cleavage, therefore, between them must not be so deep or impassable that the minority of today may not become the majority of tomorrow by the transfer of allegiance of a certain percentage of the electorate. This, however, is only possible in a country where a high degree of social homogeneity has been attained. Where class, economic, sectional or confessional attachments are so strong as to assimilate all political divisions to them there is no possibility of an ebb and flow of party strength. Upon the continent of Europe the existence of numerous parties, all of which are determined by lines of social and economic cleavage, constitutes a serious impediment to cabinet government. Ministries, there, are nearly always coalitions. They are unable to count upon the support of a loyal body of partisan followers, and either quickly fall as the result of the dissolution of the temporary union between the divergent interests which have brought them into office, or rely upon corruption and the illegal use of power to maintain their position. The experience of continental countries which have grafted cabinet government upon their native systems of law and administration likewise affords conclusive evidence that it is essentially incompatible with a high degree of administrative centralization and the attendant system of administrative law and administrative courts (*see* ADMINISTRATION IN EUROPE).

See COMMITTEE SYSTEM; CONGRESSIONAL GOVERNMENT; HOUSE OF COMMONS; MINISTERS AND MINISTERIAL RESPONSIBILITY; PARLIAMENT; PARTY GOVERNMENT IN GREAT BRITIAN; PARTY GOVERNMENTS, COMPARISON OF; PRIME MINISTER.

References: W. Bagehot, *The English Constitution* (2d ed., 1872); J. W. Garner, *Intro. to Pol. Sci.* (1910), 180–189; W. E. Gladstone, *Gleanings of Past Years* (1878), I, 203–248; A. L. Lowell, *Government of England* (1908), I, chs. ii, iii, xvii, xviii, xxii, xxiii, *Essays on Government* (1889), Essay i; S. J. Low, *The Governance of England* (1904), chs. ii–v, vii, viii; J. E. C. Bodley, *France* (1898), II, Bk. 3; A. Esmein, *Elements de Droit Constitutionnel* (4me. ed., 1906), Titre premier, ch. v.

WALTER JAMES SHEPARD.

CABINET GOVERNMENT IN ENGLAND. Result of growth.—Cabinet government as it exists in England today is not a creation of any man of political genius. It is based on no statutes; nor have its limits ever been defined. There are landmarks in the development of the system; but no time can be named at which the cabinet became complete or perfected. It originated in its present form in the reign of William III. Its roots push back to the reign of Charles II; and since the second extension of the franchise in 1867, there is proof that the development of the Cabinet—its growth in power—is still proceeding. In recent years with the free use of the closure in the House of Commons, the Cabinet has been drawing to itself increasing power over Parliament, especially over the Commons, much as, between the Revolution of 1688 and the early years of the reign of Queen Victoria, it drew to itself powers formerly exercised by the sovereign, and nominally still the prerogative of the Crown.

Cabinet and the Ministry.—The Cabinet must not be confused with the Ministry. All members of the Cabinet are of the Ministry—of the members of the House of Commons or of the House of Lords who hold office under the Government, and who retire from office when the Government goes out of power. All members of the Ministry are, however, not of the Cabinet. Of the Asquith Ministry, as it was organized after the general election of December, 1910, to take a modern example, there were fifty-two members, including eight who hold appointments in the royal household. But of these fifty-two—all appointed by the Prime Minister—only nineteen were of the Cabinet, of the inner committee of the Privy Council chosen by the Prime Minister with the approval of the sovereign on each member, for the conduct of the parliamentary and administrative business of the state. Members of the Ministry must support the policies of the Cabinet in Parliament—vote with the Government as regularly as Cabinet Ministers, although they have no part in determining what these policies shall be. Nearly all members of the Cabinet begin their careers as members of the Ministry without Cabinet rank. There are instances to the contrary, as in the case of Morley in 1886, and Burns in 1905. Usually, however, a period of service in a subordinate office in the Ministry precedes appointment to the Cabinet.

Origin and Development.—The Cabinet began in the reign of William III as a group of prominent personages with whom the King found it more convenient to discuss the business of the country than with the Privy Council. By 1700, while the modern system of government by party was still in its infancy, there had become established the principles ever since in practice; (1) that the inner circle of advisers of the sovereign must be of the party in the majority in the House of Commons; and (2) that it must be composed exclusively of the heads of government departments. No one can say when it became a rule that these persons should be in one or other house of Parliament; and even yet there is no accepted rule as to how many of the members of the Cabinet shall be of the House of Commons and how many of the House of Lords. In the eighteenth century the greatest development of the Cabinet as regards its relations with the Crown was in the reign of George I. Unlike his predecessors, William III and Anne, George I did not attend meetings of the

Cabinet, and thereafter it became the rule that the King should leave to his Ministers the determination of the policy of the country.

The absence of the King, completed the severance of the Cabinet from the Privy Council. It ceased to be a meeting of the Lords of the Privy Council; it became a meeting of the leaders in Parliament of the party that was in a majority in the House of Commons. One link with the Privy Council of the seventeenth century has been retained. The Lord President of the Council is of every Cabinet; and in the event of a division in the Cabinet the vote would be taken by the Lord President. Whatever may be the individual liabilities of the members of the Cabinet as heads of departments, the collective Cabinet has no legal existence nor legal liability. It meets by summons of the Prime Minister, issued through his private secretary; it is restricted to no one place of meeting; it has no secretary and no minute book; and its proceedings are unrecorded save in communications to the Crown by the Prime Minister in the form of Cabinet Minutes or reports of the transactions of a Cabinet meeting.

In the reign of George III while there was some departure from the principle that the King should act through and not with his Cabinet, the principle of the joint responsibility of ministers became established at the downfall of the North administration in 1782. Thereafter it became the accepted rule that ministers must stand or fall together, with the consequence, as Anson points out, that the influence of the Crown upon the working of the Government was obviously diminished, and that of the Commons increased. "If the King should be dissatisfied with the working of a particular department," continues Anson, "he cannot now, as the King could and did in the eighteenth century, dismiss the minister responsible for the department, unless he has lost the confidence of his colleagues as well as of the Crown; to do so would bring about the retirement of the entire ministry. The Crown has to deal with a body of men who stand or fall together, because they represent common interests and the opinions of a party. They can only remain ministers while a majority of the House of Commons is willing to support their policy, and is not willing to support any other."

It was 1834 before it was finally settled that the sovereign could not, as William IV then attempted to do, dismiss one government and appoint another which had not the support of the House of Commons. The Melbourne administration was in power when this last struggle between the Crown and the House of Commons began. Althrop, son and heir of Earl Spencer, was Chancellor of the Exchequer, and leader of the House of Commons in this Whig administration of July-November, 1834. Spencer died on the tenth of November. Althorp's succession to the peerage involved his transference from the House of Commons to the Lords. The King, who had no liking for the Whigs, took upon himself to insist that Althorp's withdrawal from the Commons so weakened the Government that it was impossible for it to go on; and when Melbourne submitted to William IV a choice of names for the office that Althorp had vacated, the King intimated that it was his intention to send for Wellington, and ask him to carry on the government, until Peel, who was then in Rome, could be summoned to London to undertake the task of forming an administration. The King, of his own initiative, thus dismissed the Melbourne Government. A provisional government was formed in which Wellington held the office of First Lord of the Treasury, and also Secretary for Home Affairs, Secretary for Foreign Affairs and Secretary for War and the Colonies. Peel took office in December, formed a new administration, and dissolved Parliament. The election resulted in a majority for the Whigs. The Peel Administration met the new Parliament. On April 3, 1835, it was defeated on a question of adjournment by a majority of 38; and on April 8, Peel abandoned the attempt to keep together a government of William IV's own creation, and the Melbourne administration of 1835–41 came into power.

Trevelyan describes the onslaught of the Whigs on the Peel Government as "a struggle fought to establish once and for ever the most vital of all constitutional principles." "Not a vote nor a speech," he continues, "was thrown away of all that were directed against Peel's first ministry. It was worth any expenditure of time, and breath, and energy, to vindicate the right of the country to choose its rulers for itself, instead of accepting those which might be imposed from above."

Present Authority.—It is today accepted as a constitutional principle that the Cabinet consists of members of the House of Commons or of the House of Lords, of the same political views, and chosen from the same political party, prosecuting a concerted policy under a common responsibility, to be signified by collective resignation in the event of parliamentary censure, and acknowledging a common subordination to the Prime Minister. Only censure by the House of Commons—an adverse vote in the popularly-elected chamber—can affect the fate of a Cabinet. A vote of censure by the House of Lords can have no adverse effect. The complete establishment of the principle of collective responsibility of the Cabinet for measures submitted to Parliament is a development of the nineteenth century.

Recent Developments.—The most obvious inroads on the prerogative of the Crown due to the development of the cabinet system are control of the issues of war and peace, of the dissolution of Parliament, of appointment to

the great offices of state, over the army and navy, the making of bishops and the creation of peers. From the House of Commons the Cabinet has withdrawn the control over its own sittings and its own time, all but nominal control over national expenditures, and also control of foreign policy. By its use of the closure, and its ability to precipitate a general election if insubordination threatens, the Cabinet has, moreover, since 1885, drawn to itself the power of framing legislation without consultation with its supporters, and forcing measures through the House of Commons without opportunity for amendment.

See EXECUTIVE SYSTEM IN GREAT BRITAIN; HOUSE OF COMMONS; LEGISLATION, BRITISH SYSTEM OF; PARLIAMENT; PARTY GOVERNMENT IN GREAT BRITAIN.

References: W. R. Anson, *Law and Custom of the Constitution* (4th ed., 1909); A. L. Lowell, *The Government of England* (1908); H. D. Traill, *Central Government* (2d ed., 1908); S. Low, *The Governance of England* (1904).

EDWARD PORRITT.

CABINET MEMBERS

Lists of Cabinet officers differ in the various authorities because some have used the date of confirmation by the Senate, some that of commission, some that of appointment, and some that of entering upon the office. Most lists also omit *ad interim* appointments. The following list is founded upon the entries in the *Senate Executive Journals*, as worked out by Miss Hinsdale and other authorities, and include the longer *ad interim* appointments. In the list of Cabinet officers, under the heading of each department, will be found all *ad interim* appointments even for a day or two.

It is to be observed that the Post Office Department was in existence from 1789; but that Barry, in Jackson's administration, was the first to be summoned to Cabinet meetings. The Navy Department begins with the appointment of Stoddard in 1798; the Department of the Interior with the appointment of Ewing in 1849. The Attorney General was legally recognized as head of the Department of Justice in 1878. The Department of Agriculture (previously in existence) was made a Cabinet department with Coleman's appointment in 1889. The Department of Commerce and Labor was established with Cortelyou as the first Secretary in 1903. From certain bureaus of this Department, the Department of Labor was formed in 1913.

WASHINGTON, 1789-1793

(*First Term*)

State.—T. Jefferson, Sept. 26, 1789.
Treasury.—A. Hamilton, Sept. 11, 1789.
War.—H. Knox, Sept. 12, 1789.
Attorney-General.—E. Randolph, Sept. 26, 1789.

WASHINGTON, 1793-1797

(*Second Term*)

State.—T. Jefferson, continued.
E. Randolph, Jan. 2, 1794.
T. Pickering (Sec. of War), *ad interim*, Aug. 20, 1795.
T. Pickering, Dec. 10, 1795.
Treasury.—A. Hamilton, continued.
O. Wolcott, Jr., Feb. 2, 1795.
War.—H. Knox, continued.
T. Pickering, Jan. 2, 1795.
J. McHenry, Jan. 27, 1796.
Attorney-General.—E. Randolph, continued.
W. Bradford, Jan. 27, 1794.
C. Lee, Dec. 10, 1795.

JOHN ADAMS, 1797-1801

State.—T. Pickering, continued.
J. Marshall, May 13, 1800.
Treasury.—O. Wolcott, Jr., continued.
S. Dexter, Jan. 1, 1801.
War.—J. McHenry, continued.
S. Dexter, May 13, 1800.
Attorney-General.—C. Lee, continued.
Navy.—B. Stoddert, May 21, 1798.

JEFFERSON, 1801-1805

(*First Term*)

State.—L. Lincoln, Mar. 4, 1801.
J. Madison, Mar. 5, 1801.
Treasury S. Dexter, continued.
A. Gallatin, May 14, 1801.

JEFFERSON, 1801-1805 (*continued*)

War.—H. Dearborn, Mar. 5, 1801.
Attorney-General.—L. Lincoln, Mar. 5, 1801.
Navy.—B. Stoddert, continued.
H. Dearborn (Sec. of War), *ad interim*, Apr. 1, 1801.
R. Smith, July 15, 1801.

JEFFERSON, 1805-1809

(*Second Term*)

State.—J. Madison, continued.
Treasury.—A. Gallatin, continued.
War.—H. Dearborn, continued.
Attorney-General.—J. Breckenridge, Aug. 7, 1805.
C. A. Rodney, Jan. 20, 1807.
Navy.—R. Smith, continued.

MADISON, 1809-1813

(*First Term*)

State.—R. Smith, Mar. 6, 1809.
J. Monroe, Apr. 2, 1811.
Treasury.—A. Gallatin, continued.
War.—W. Eustis, Mar. 7, 1809.
J. Armstrong, Jan. 13, 1813.
Attorney-General.—C. A. Rodney, continued.
W. Pinkney, Dec. 11, 1811.
Navy.—P. Hamilton, Mar. 7, 1809.
W. Jones, Jan. 12, 1813.

MADISON, 1813-1817

(*Second Term*)

State.—J. Monroe, continued.
Treasury.—A. Gallatin, continued.
G. W. Campbell, Feb. 9, 1814.
A. J. Dallas, Oct. 6, 1814.
W. H. Crawford, Oct. 22, 1816.

MADISON, 1813-1817 (*continued*)

War.—J. Armstrong, continued.
J. Monroe, Sept. 27, 1814.
A. J. Dallas (Sec. of Treas.), *ad interim*, Mar. 14, 1815.
W. H. Crawford, Aug. 1, 1815.
Attorney-General.—W. Pinkney, continued.
R. Rush, Feb. 10, 1814.
Navy.—W. Jones, continued.
B. W. Crowninshield, Dec. 19, 1814.

MONROE, 1817-1821

(*First Term*)

State.—J. Q. Adams, Mar. 5, 1817.
Treasury.—W. H. Crawford, continued.
War.—G. Graham (Chief Clerk), *ad interim*, Mar. 4, 1817.
J. C. Calhoun, Oct. 8, 1817.
Attorney-General.—R. Rush, continued.
W. Wirt, Nov. 13, 1817.
Navy.—B. W. Crowninshield, continued.
S. Thompson, Nov. 9, 1818.

MONROE, 1821-1825

(*Second Term*)

State. J. Q. Adams, continued.
Treasury.—W. H. Crawford, continued.
War.—J. C. Calhoun, continued.
Attorney-General.—W. Wirt, continued.
Navy.—S. Thompson, continued.
S. L. Southard, Sept. 16, 1823.

J. Q. ADAMS, 1825-1829

State.—H. Clay, Mar. 7, 1825.
Treasury.—R. Rush, Mar. 7, 1825.
War.—J. Barbour, Mar. 7, 1825.
P. B. Porter, May 26, 1828.
Attorney-General.—W. Wirt, continued.
Navy.—S. L. Southard, continued.

JACKSON, 1829-1833

(*First Term*)

State.—M. Van Buren, Mar. 6, 1829.
E. Livingston, May 24, 1831.
Treasury.—S. D. Ingham, Mar. 6, 1829.
L. McLane, Aug. 8, 1831.
War.—J. H. Eaton, Mar. 9, 1829.
L. Cass, Aug. 1, 1831.
Attorney-General.—J. M. Berrien, Mar. 9, 1829.
R. B. Taney, July 20, 1831.
Postmaster-General.—W. T. Barry, Mar. 9, 1829.
Navy.—J. Branch, Mar. 9, 1829.
L. Woodbury, May 23, 1831.

JACKSON, 1833-1837

(*Second Term*)

State.—E. Livingston, continued.
L. McLane, May 29, 1833.
J. Forsyth, June 27, 1834.
Treasury.—L. McLane, continued.
W. J. Duane, May 29, 1833.
R. B. Taney, Sept. 23, 1833.
L. Woodbury, June 27, 1834.
War.—L. Cass, continued.
B. F. Butler, *ad interim*, Oct. 26, 1836.
B. F. Butler, Mar. 3, 1837.
Attorney-General.—R. B. Taney, continued.
B. F. Butler, Nov. 15, 1833.
Postmaster-General.—W. T. Barry, continued.
A. Kendall, May 1, 1833.
Navy.—L. Woodbury, continued.
M. Dickerson, June 30, 1834.

VAN BUREN, 1837-1841

State.—J. Forsyth, continued.
Treasury.—L. Woodbury, continued.
War.—J. R. Poinsett, Mar. 7, 1837.
Attorney-General.—B. F. Butler, continued.
F. Grundy, July 5, 1838.
H. D. Galpin, Jan. 11, 1840.
Postmaster-General.—A. Kendall, continued.
J. M. Niles, May 19, 1840.
Navy.—M. Dickerson, continued.
J. K. Paulding, June 25, 1838.

W. H. HARRISON, 1841—Apr. 4, 1841

State.—D. Webster, Mar. 5, 1841.
Treasury.—T. Ewing, Mar. 5, 1841.
War.—J. Bell, Mar. 5, 1841.
Attorney-General.—J. J. Crittenden, Mar. 5, 1841.
Postmaster-General.—F. Granger, Mar. 6, 1841.
Navy.—G. E. Badger, Mar. 5, 1841.

TYLER, Apr. 4, 1841-1845

State.—D. Webster, continued.
H. S. Legaré, *ad interim*, May 9, 1843.
A. P. Upshur, July 24, 1843.
J. C. Calhoun, Mar. 6, 1844.
Treasury.—T. Ewing, continued.
W. Forward, Sept. 13, 1841.
J. C. Spencer, Mar. 3, 1843.
G. M. Bibb, June 15, 1844.
War.—J. Bell, continued.
J. C. Spencer, Oct. 12, 1841.
J. M. Porter, Mar. 8, 1843.
W. Wilkins, Feb. 15, 1844.
Attorney-General.—J. J. Crittenden, continued.
H. S. Legaré, Sept. 13, 1841.
J. Nelson, July 1, 1843.
Postmaster-General.—F. Granger, continued.
C. A. Wickliffe, Sept. 13, 1841.
Navy.—G. E. Badger, continued.
A. P. Upshur, Sept. 13, 1841.
D. Henshaw, July 24, 1843.
T. W. Gilmer, Feb. 15, 1844.
J. Y. Mason, Mar. 14, 1844.

POLK, 1845-1849

State.—J. Buchanan, Mar. 6, 1845.
Treasury.—R. J. Walker, Mar. 6, 1845.
War.—W. L. Marcy, Mar. 6, 1845.
Attorney-General.—J. Y. Mason, Mar. 6, 1845.
N. Clifford, Oct. 17, 1846.
I. Toucey, June 21, 1848.
Postmaster-General.—C. Johnson, Mar. 6, 1845.
Navy.—G. Bancroft, Mar. 10, 1845.
J. Y. Mason, Sept. 9, 1846.

TAYLOR, 1849—July 9, 1850

State.—J. M. Clayton, Mar. 7, 1849.
Treasury.—W. M. Meredith, Mar. 8, 1849.
War.—G. W. Crawford, Mar. 8, 1849.
Attorney-General.—R. Johnson, Mar. 8, 1849.
Postmaster-General.—J. Collamer, Mar. 8, 1849.
Navy.—W. B. Preston, Mar. 8, 1849.
Interior.—T. Ewing, Mar. 8, 1849.

FILLMORE, July 9, 1850-1853

State.—J. M. Clayton, continued.
D. Webster, July 22, 1850.
E. Everett, Nov. 6, 1852.
Treasury.—W. M. Meredith, continued.
T. Corwin, July 23, 1850.
War.—G. W. Crawford, continued.
C. M. Conrad, Aug. 15, 1850.
Attorney-General.—R. Johnson, continued.
J. J. Crittenden, July 22, 1850.
Postmaster-General.—J. Collamer, continued.
N. K. Hall, July 23, 1850.
S. D. Hubbard, Aug. 31, 1852.
Navy.—W. B. Preston, continued.
W. A. Graham, July 22, 1850.
J. P. Kennedy, July 22, 1852.
Interior.—T. Ewing, continued.
A. H. H. Stuart, Sept. 12, 1850.

PIERCE, 1853-1857

State.—W. L. Marcy, Mar. 7, 1853.
Treasury.—J. Guthrie, Mar. 7, 1853.
War.—J. Davis, Mar. 7, 1853.
Attorney-General.—C. Cushing, Mar. 7, 1853.
Postmaster-General.—J. Campbell, Mar. 7, 1853.
Navy.—J. C. Dobbin, Mar. 7, 1853.
Interior.—R. McClelland, Mar. 7, 1853.

BUCHANAN, 1857-1861

State.—L. Cass, Mar. 6, 1857.
J. S. Black, Dec. 17, 1860.
Treasury.—H. Cobb, Mar. 6, 1857.
P. F. Thomas, Dec. 12, 1860.
J. A. Dix, Jan. 11, 1861.
War.—J. B. Floyd, Mar. 6, 1857.
J. Holt, Jan. 18, 1861.
Attorney-General.—J. S. Black, Mar. 6, 1857.
E. M. Stanton, Dec. 20, 1860.

BUCHANAN, 1857-1861 (*continued*)

Postmaster-General.—A. V. Brown, Mar. 6, 1857.
J. Holt, Mar. 14, 1859.
H. King, Feb. 12, 1861.
Navy.—I. Toucey, Mar. 6, 1857.
Interior.—J. Thompson, Mar. 6, 1857.

LINCOLN, 1861-1865

(*First Term*)

State.—W. H. Seward, Mar. 5, 1861.
Treasury.—S. P. Chase, Mar. 5, 1861.
W. P. Fessenden, July 1, 1864.
War.—S. Cameron, Mar. 5, 1861.
E. M. Stanton, Jan. 15, 1862.
Attorney-General.—E. Bates, Mar. 5, 1861.
J. Speed, Dec. 2, 1864.
Postmaster-General.—M. Blair, Mar. 5, 1861.
W. Dennison, Sept. 24, 1864.
Navy.—G. Welles, Mar. 5, 1861.
Interior.—C. B. Smith, Mar. 5, 1861
J. P. Usher, Jan. 8, 1863.

LINCOLN, 1865—Apr. 15, 1865

(*Second Term*)

State.—W. H. Seward, continued.
Treasury.—H. McCulloch, continued.
War.—E. M. Stanton, continued.
Attorney-General.—J. Speed, continued.
Postmaster-General.—W. Dennison, continued.
Navy.—G. Welles, continued.
Interior.—J. P. Usher, continued.

JOHNSON, Apr. 15, 1865-1869

State.—W. H. Seward, continued.
Treasury.—H. McCulloch, continued.
War.—E. M. Stanton, continued.
U. S. Grant, *ad interim*, Aug. 12, 1867.
E. M. Stanton (reinstated), Jan. 13, 1868.
L. Thomas, *ad interim*, Feb. 21, 1868.
J. M. Schofield, May 28, 1868.
Attorney-General.—J. Speed, continued.
H. Stanbery, July 23, 1866.
O. H. Browning, *ad interim*, Mar. 13, 1868.
W. M. Evarts, July 15, 1868.
Postmaster-General.—W. Dennison, continued.
A. W. Randall, July 25, 1866.
Navy.—G. Welles, continued.
Interior.—J. P. Usher, continued.
J. Harlan, May 15, 1865.
O. H. Browning, July 27, 1866.

GRANT, 1869-1873

(*First Term*)

State.—E. B. Washburn, Mar. 5, 1869.
H. Fish, Mar. 11, 1869.
Treasury.—G. S. Boutwell, Mar. 11, 1869.
War.—J. A. Rawlins, Mar. 11, 1869.
W. T. Sherman, Sept. 9, 1869.
W. W. Belknap, Oct. 25, 1869.
Attorney-General.—E. H. Hoar, Mar. 5, 1869.
A. T. Akerman, June 23, 1870.
G. H. Williams, Dec. 14, 1871.
Postmaster-General.—J. A. J. Cresswell, Mar. 5, 1869.
Navy.—A. E. Borie, Mar. 5, 1869.
G. M. Robeson, June 25, 1869.
Interior.—J. D. Cox, Mar. 5, 1869.
C. Delano, Nov. 1, 1870.

GRANT, 1873-1877

(*Second Term*)

State.—H. Fish, Mar. 17, 1873.
Treasury.—W. A. Richardson, Mar. 17, 1873.
B. H. Bristow, June 2, 1874.
L. M. Morrill, June 21, 1876.
War.—W. W. Belknap, Mar. 17, 1873.
A. Taft, Mar. 8, 1876.
J. D. Cameron, May 22, 1876.
Attorney-General.—G. H. Williams, Mar. 17, 1873.
E. Pierrepont, Apr. 26, 1875.
A. Taft, May 22, 1876.
Postmaster-General.—J. A. J. Cresswell, Mar. 17, 1873.
J. W. Marshall, July 3, 1874.
M. Jewell, Aug. 24, 1874.
J. M. Tyner, July 12, 1876.
Navy.—G. M. Robeson, Mar. 17, 1873.
Interior.—C. Delano, Mar. 17, 1873.
Z. Chandler, Oct. 19, 1875.

HAYES, 1877-1881

State.—W. M. Evarts, Mar. 12, 1877.
Treasury.—J. Sherman, Mar. 8, 1877.
War.—G. W. McCrary, Mar. 12, 1877.
A. Ramsey, Dec. 10, 1879.
Attorney-General.—C. Devans, Mar. 12, 1877.
Postmaster-General.—D. M. Key, Mar. 12, 1877.
H. Maynard, June 2, 1880.
Navy.—R. W. Thompson, Mar. 12, 1877.
N. Goff, Jr., Jan. 6, 1881.
Interior.—C. Schurz, Mar. 12, 1877.

GARFIELD, 1881—Sept. 19, 1881

State.—J. G. Blaine, Mar. 5, 1881.
Treasury.—W. Windom, Mar. 5, 1881.
War.—R. T. Lincoln, Mar. 5, 1881.
Attorney-General.—W. MacVeagh, Mar. 5, 1881.
Postmaster-General.—T. L. James, Mar. 5, 1881.
Navy.—W. H. Hunt, Mar. 5, 1881.
Interior.—S. J. Kirkwood, Mar. 5, 1881.

ARTHUR, Sept. 19, 1881–1885

State.—J. G. Blaine, continued.
F. T. Frelinghuysen, Dec. 12, 1881.
Treasury.—C. J. Folger, Oct. 27, 1881.
W. Q. Gresham, Sept. 24, 1884.
H. McCulloch, Oct. 28, 1884.
War.—R. T. Lincoln, continued.
Attorney-General.—B. H. Brewster, Dec. 19, 1881.
Postmaster-General.—T. L. James (cont.; recommissioned) Oct. 27, 1881.
T. O. Howe, Dec. 20, 1881.
W. Q. Gresham, Apr. 3, 1883.
F. Hatton, Oct. 14, 1884.
Navy.—W. H. Hunt, continued.
W. E. Chandler, Apr. 12, 1882.
Interior.—S. J. Kirkwood, continued.
H. M. Teller, Apr. 6, 1882.

CLEVELAND, 1885-1889

(*First Term*)

State.—T. F. Bayard, Mar. 6, 1885.
Treasury.—D. Manning, Mar. 6, 1885.
C. S. Fairchild, Apr. 1, 1887.
War.—W. C. Endicott, Mar. 6, 1885.
Attorney-General.—A. H. Garland, Mar. 6, 1885.
Postmaster-General.—W. F. Vilas, Mar. 6, 1885.
D. M. Dickinson, Jan. 16, 1888.
Navy.—W. C. Whitney, Mar. 6, 1885.
Interior.—L. Q. C. Lamar, Mar. 6, 1885.
W. F. Vilas, Jan. 16, 1888.
Agriculture.—N. J. Coleman, Feb. 13, 1889.

BENJAMIN HARRISON, 1889-1893

State.—J. G. Blaine, Mar. 5, 1889.
J. W. Foster, June 29, 1892.
Treasury.—W. Windom, Mar. 5, 1889.
C. Foster, Feb. 24, 1891.
War.—R. Proctor, Mar. 5, 1889.
S. B. Elkins, Dec. 22, 1891.
Attorney-General.—W. H. H. Miller, Mar. 5, 1889.
Postmaster-General.—J. Wanamaker, Mar. 5, 1889.
Navy.—B. F. Tracy, Mar. 5, 1889.
Interior.—J. W. Noble, Mar. 5, 1889.
Agriculture.—J. M. Rusk, Mar. 5, 1889.

CLEVELAND, 1893-1897

(*Second Term*)

State.—W. Q. Gresham, Mar. 6, 1893.
R. Olney, June 8, 1895.
Treasury.—J. G. Carlisle, Mar. 6, 1893.
War.—D. S. Lamont, Mar. 6, 1893.
Attorney-General.—R. Olney, Mar. 6, 1893.
J. Harmon, June 8, 1895.
Postmaster-General.—W. S. Bissell, Mar. 6, 1893.
W. L. Wilson, Mar. 1, 1895.
Navy.—H. A. Herbert, Mar. 6, 1893.
Interior.—H. Smith, Mar. 6, 1893.
D. R. Francis, Sept. 1, 1896.
Agriculture.—J. S. Morton, Mar. 6, 1893.

McKINLEY, 1897-1901

(*First Term*)

State.—J. Sherman, Mar. 5, 1897.
W. R. Day, Apr. 26, 1898.
J. Hay, Sept. 20, 1898.
Treasury.—L. J. Gage, Mar. 5, 1897.

McKINLEY, 1897-1901 (*continued*)

War.—R. A. Alger, Mar. 5, 1897.
E. Root, Aug. 1, 1899.
Attorney-General.—J. McKenna, Mar. 5, 1897.
J. W. Griggs, Jan. 25, 1898.
Postmaster-General.—J. A. Gary, Mar. 5, 1897.
C. E. Smith, Apr. 21, 1898.
Navy.—J. D. Long, Mar. 5, 1897.
Interior.—C. N. Bliss, Mar. 5, 1897.
E. A. Hitchcock, Dec. 21, 1898.
Agriculture.—J. Wilson, Mar. 5, 1897.

McKINLEY, 1901—Sept. 14, 1901

(*Second Term*)

State.—J. Hay, Mar. 5, 1901.
Treasury.—L. J. Gage, Mar. 5, 1901.
War.—E. Root, Mar. 5, 1901.
Attorney-General.—J. W. Griggs, Mar. 5, 1901.
P. C. Knox, Apr. 5, 1901.
Postmaster-General.—C. E. Smith, Mar. 5, 1901.
Navy.—J. D. Long, Mar. 5, 1901.
Interior.—E. A. Hitchcock, Mar. 5, 1901.
Agriculture.—J. Wilson, Mar. 5, 1901.

ROOSEVELT, Sept. 14, 1901-1905

(*First Term*)

State.—J. Hay, continued.
Treasury.—L. J. Gage, continued.
L. M. Shaw, Jan. 9, 1902.
War.—E. Root, continued.
W. H. Taft, Jan. 11, 1904.
Attorney-General.—P. C. Knox, continued.
W. H. Moody, July 1, 1904.
Postmaster-General.—C. E. Smith, continued.
H. C. Payne, Jan. 9, 1902.
R. J. Wynne, Oct. 10, 1904.
Navy.—J. D. Long, continued.
W. H. Moody, Apr. 29, 1902.
P. Morton, July 1, 1904.
Interior.—E. A. Hitchcock, continued.
Agriculture.—J. Wilson, continued.
Commerce and Labor.—G. B. Cortelyou, Feb. 16, 1903.
V. H. Metcalf, July 1, 1904.

ROOSEVELT, 1905-1909

(*Second Term*)

State.—J. Hay, Mar. 6, 1905.
E. Root, July 7, 1905.
R. Bacon, Jan. 27, 1909.
Treasury.—L. M. Shaw, Mar. 6, 1905.
G. B. Cortelyou, Jan. 15, 1907.
War.—W. H. Taft, Mar. 6, 1905.

ROOSEVELT, 1905-1909 (*continued*)

L. E. Wright, June 29, 1908.
Attorney-General.—W. H. Moody, Mar. 6, 1905.
C. J. Bonaparte, Dec. 12, 1906.
Postmaster-General.—G. B. Cortelyou, Mar. 6, 1905
G. von L. Meyer, Jan. 15, 1907.
Navy.—P. Morton, Mar. 6, 1905.
C. J. Bonaparte, July 1, 1905.
V. H. Metcalf, Dec. 12, 1906.
T. H. Newberry, Dec. 1, 1908.
Interior.—E. A. Hitchcock, Mar. 6, 1905.
J. R. Garfield, Jan. 15, 1907.
Agriculture.—J. Wilson, Mar. 6, 1905.
Commerce and Labor.—V. H. Metcalf, Mar. 6, 1905.
O. S. Straus, Dec. 12, 1906.

TAFT, 1909-1913

State.—P. C. Knox, Mar. 5, 1909.
Treasury.—F. MacVeagh, Mar. 5, 1909.
War.—J. M. Dickinson, Mar. 5, 1909.
H. L. Stimson, May 15, 1911.
Attorney-General.—G. W. Wickersham, Mar. 5, 1909.
Postmaster-General.—F. H. Hitchcock, Mar. 5, 1909.
Navy.—G. von L. Meyer, Mar. 5, 1909.
Interior.—R. A. Ballinger, Mar. 5, 1909.
W. H. Fisher, Mar. 13, 1911.
Agriculture.—J. Wilson, Mar. 5, 1909.
Commerce and Labor.—C. Nagel, Mar. 5, 1909.

WILSON, 1913-

State.—W. J. Bryan, Mar. 5, 1913.
Treasury.—W. G. McAdoo, Mar. 5, 1913.
War.—L. M. Garrison, Mar. 5, 1913.
Attorney-General.—J. C. McReynolds, Mar. 5, 1913
Postmaster-General.—A. S. Burleson, Mar. 5, 1913.
Navy.—J. Daniels, Mar. 5, 1913.
Interior.—F. K. Lane, Mar. 5, 1913.
Agriculture.—D. F. Houston, Mar. 5, 1913.
Commerce.—W. C. Redfield, Mar. 5, 1913.
Labor.—W. B. Wilson, Mar. 5, 1913.

See Departments by name; lists of secretaries by names of departments; CABINET OF THE PRESIDENT; EXECUTIVE DEPARTMENTS.

References: M. L. Hinsdale, *A Hist. of the President's Cabinet* (1911); R. B. Mosher, *Executive Register of the U. S.* (1903); H. B. Learned, *The President's Cabinet* (1911); *Journals of the Executive Proceedings of the Senate of the U. S.* (32 vols., 1828–1911).

ANDREW C. MCLAUGHLIN.

CABINET OF THE PRESIDENT

Definition.—The Cabinet in the United States, is an organ appended to the presidency. It is composed of the officers in charge of the great branches of administration and in the present stage of executive organization, has ten members (1913).

Origin and Growth.—Administration was originally divided into three principal branches, styled the Departments of State, Treasury, and War. Simultaneously, an officer called the Attorney-General was created inside of the judiciary, to be prosecutor for the national government, and counsel to the President and department heads on questions of law. As late as 1870, this officer was made the head of a Department of Justice. In 1798, incidental to preparations for war with France, a Navy Department was created separate from the War Office. In 1829, the Post-Office was raised to the rank of a Cabinet portfolio, by President Jackson, suitably to the new significance that attached to the Government patronage under the spoils system. The four newest portfolios reflect the demand for larger federal regulation of internal affairs, that has accompanied the industrial and economic development of the country. In 1849, a number of offices and bureaus previously distributed among the other divisions were combined into the Department of the Interior. In 1889, a Department of Agriculture was created out of a humbler establishment that had existed for some years under a commissioner. A Department of Commerce and Labor was established in 1903. In 1913, this was divided into two departments, in consequence of a demand for a separate Department of Labor.

George Washington, early in his presidency, instituted an advisory council of the three department heads, styled secretaries, and the Attorney-General. The step was an extra-legal one. But he had a clear suggestion in

the deliberation of the Federal Convention, that the chief executive might use the heads of administration, and certain other high officers as well, for consultative purposes. Moreover, the narrower provision that the President might require of the principal administrative officers written opinions about matters in their own departments, had found a place in the clauses of the Constitution (Art. II, Sec. ii, ¶ 1). Washington had other confidential advisers, particularly the Chief Justice, the leader of the House of Representatives, and the Vice-President, the Chief-Justice being, for a little while, more conspicuous than the Attorney-General. In fact, so long as written opinions are the only record of executive deliberation, the official council is not easily distinguishable. It can be discovered emerging as a separate group in 1791; and, in 1793, it takes on a distinct collegiate life, rendered outwardly visible by frequent assembling for personal consultation. The crisis in foreign relations precipitated by the French minister, Genêt, was the immediate occasion. At this season, the name "Cabinet" began to be applied.

Political unanimity did not as yet possess the administration and counsels of the Government. The two great figures of the original Cabinet, Alexander Hamilton, Secretary of the Treasury, and Thomas Jefferson, Secretary of State, were the very chiefs and founders of the Federalist and Republican parties. After their retirement, Edmund Randolph, who passed from the Attorney-General's office to the secretaryship of state, stood aloof as a Republican from Federalist colleagues. Incidental to the acceptance of Jay's treaty with England, 1795, the President avowed a purpose, henceforth to have unanimity of principles in his counsels. Washington had no vision of party as an organ of government, powerful, if voluntary. But he arrived by experience of balanced counsels and department interference, where he could sec that to call into offices of consequence men whose political tenets were adverse to those of the general Government would be suicidal. The principle at once became fundamental to the making of a Cabinet, so that when it was foreseen in 1800 that the Republicans would elect a President, a change of party in the department heads was taken as matter of course. This general political agreement is the bond that gives solidarity to the executive.

The Administration.—The President and Cabinet together are the "administration." The term comprehends the executive officers as a body operating with the common purpose of enforcing the principles of the party in power. The President is the head and centre. It is impossible, in fact, to separate the Cabinet from him, for discussion of its functions. The departments are equal in their subordination. There are no gradations of authority, and no means of inter-connection, except as they grow out of the Cabinet council. The theory upon which the government has proceeded, in recent times, is that the President is the master of administration, possessing all power of direction, short of suspending the laws. Actually, he does not direct ordinary department operations. Practical necessity vests the secretaries with a measure of authority and discretion. Historically, there are claims to secretarial discretion independent of the President's will; and the two parts of the executive have several times been in conflict, the most familiar instance being the struggle between President Jackson and his Secretary of the Treasury. The issue has always been the expansion of the President's powers.

The "administration," as Professor F. J. Goodnow points out, is a very appropriate name, because it indicates of itself that the American executive is restricted to the field of law *operating*, and stops short of the law *making* powers that entitle its English counterpart to be called the "government." The term "Cabinet" is unfortunately applied, because it inspires conceptions, that make the English Cabinet the standard and render it almost inevitable to describe its American namesake by its limitations.

Separation from Congress.—The Constitution (Art. I, Sec. vi, ¶ 2) excludes all officers of the Government from the legislature. This was viewed in its time, as a protection from monarchial encroachment and a check upon ministerial corruption. And its forms have been so jealously guarded by the democratic spirit of Congress, that the privilege of debate and even that of personal communication have been withheld from department heads. It is possible also for the administration and Congress to be out of joint politically, although party activities render such a deadlock a thing of rare occurrence. These obstacles have prevented the principle that those who administer shall guide in the making of laws from working into the structure of the government as it has done in England and some continental countries. And yet it has made its imprint by a large development of informal and unofficial means of connection between the administrative officers and Congress. With the privilege of the corridors of both houses of Congress, and the entrée to the committee rooms, the secretaries become intermediaries between President and legislature, equally important with the Congressional leaders who circulate between Capitol Hill and the White House. According to the newspapers, the Taft Administration was in consultation over legislative policies as regularly as a session of Congress approached.

Responsibility.—The Cabinet is peculiar also in its responsibility. The President is responsible to the country by popular election and a comparatively brief term of office. But the

Cabinet is responsible to him in the vital sense that its members assume and lay down office at his will. As department heads, Cabinet officers bear a moral responsibility to Congress.

They are separately liable to censure and impeachment. Conviction on impeachment works removal from office; and such is actually though not technically the result of a vote of censure. Indirectly the members of the Cabinet bear a sort of responsibility to the country. When the subject was under discussion in the first Congress, James Madison used the expression that there would always be a "responsibility in point of reputation." The application of this to the aspirations of Cabinet officers to posts that are elective is obvious. Not a few become governors, or United States Senators, and there was once a recognized succession from the Cabinet to the presidency.

The power of the President to appoint these high officers is subject to confirmation by the Senate; but the rein is a very loose one. It has sometimes restrained the President from naming the candidate of his first choice; about three regular nominations have failed of confirmation, and an equal number of secretaries established in the vacation of the Senate have been unseated. Even when the Senate and an incoming administration are politically opposed, there is a strong presumption that the executive will be accorded a fair trial. The power to remove is limited only by considerations of party welfare. The Tenure-of-Office Act of 1867 was an exception to this statement, and a reversal of the decision reached eighty years before, after exhaustive debate, that the Senate does not share in the removal power. It was a part of the degradation that Andrew Johnson suffered, as an accidental President, and, by its avowedly temporary character, has more pathological interest than normal significance (*see* REMOVAL FROM OFFICE).

The doctrine was established by the high development of the powers of appointment and removal, reached under the spoils system, that the Cabinet appertains to the President personally. From this time, it has come into office and retired with him. Earlier it had changed with the party. In forming his Cabinet, a President ordinarily observes a code of geographical and other rules, that strengthen his administration politically. Portfolios are distributed so as to cultivate pivotal states, and reward party strongholds, while the section of the country where the party has little strength, the South for the Republicans, and the West for the Democrats, barely receives recognition. The factions within the party are cemented. In American politics, these stand more often for competition for the presidency, than for shading of principles. And it is a frequent occurrence to call the President's competitors for the nomination into the Cabinet. It is quite as common to appoint proxies for them.

The Secretary of State.—The place that is filled with the greatest care is the State Department (*see*). Sometimes it is the first to be provided for, and the prospective incumbent has a share in choosing his colleagues. The Secretary of State enjoys the social precedence of the Cabinet and stands next after the Vice-President in the presidential succession. He is regarded as head of the Cabinet in influence, sitting at the President's right hand at the Cabinet table, and commanding a priority over the other secretaries in its discussions. But he has none of the powers of a premier. These reside partly in the President, and partly in the Speaker of the House of Representatives (*see*).

Meetings and Procedure.—The importance of the Cabinet as an arm of the executive is indicated by the frequency of its sessions. During the months when the President is at the seat of government, it meets regularly twice a week, Tuesday and Friday, the practice dating from the Civil War. A Cabinet conference is exactly like a conference of a board of directors. Ordinarily a few men dominate a general discussion, and yet the suggestions of the others are helpful. The nature and scope of Cabinet discussions depend upon the President. They have at times degenerated into reports of things done in the different departments. Those Presidents who manage the Cabinet most effectively despatch such matters with individual secretaries. Lincoln treated such large affairs as purely departmental concerns that he called forth a protest from the Senate. Washington's consultations ranged from the grave problems presented by the foreign relations of the young Government to the details of etiquette and procedure. On President Taft's part, there was a more definite use of the Cabinet as an inter-connexion of departments on the financial side than had been outwardly indicated of his predecessors.

Weight of Opinions.—The weight that Cabinet opinions carry is determined by the personality of President and secretaries and by surrounding conditions. Historically traced, the line of Cabinet influence is a zig-zag. The closing weeks of President Buchanan's term of office savored of a regency, with the President affixing his signature to orders issued by three or four ministers. President Pierce was so malleable in the hands of his advisers that the saying arose that he practiced polling his Cabinet and adopting the opinion of the majority. On the other hand, Jackson and Grant, military Presidents both, treated their secretaries more like orderlies than discretionary officers of state. President McKinley, in instructing the commissioners who negotiated the peace with Spain in 1898 to demand the Philippine Islands, acted contrary to the opinion of Mr. Hay, who was in-coming Secretary of State, and had been selected for talents revealed in the diplomatic service.

Right to be Consulted.—The Cabinet's claims to a right to be consulted depend upon forces that are only beginning to be considered as factors in American institutions, precedent and custom. The President is not obliged to consult the Cabinet, but he is expected to consult it. Public opinion cannot compel him to do so on specific questions, because it is not sufficiently apprised of what is happening. Notwithstanding newspaper enterprise, the executive counsels preserve a good deal of secrecy. The inside history of President Roosevelt's intervention between Japan and Russia in 1905 is not yet generally known. The administration was much dispersed at the time, and Mr. Hay, the Secretary of State, was in his last illness. A stronger constraining influence would probably proceed from members of the Government than from the country at large. The official self-respect that belongs to Cabinet office would be a very potent force to compel consultation with the secretaries immediately concerned. The rule may be laid down that the President ordinarily consults with the Cabinet on matters of grave public importance, and that only under most extraordinary conditions would he take action affecting the work of a particular department without conference with the head of that department.

Contributors to political science are wont to speak of the Cabinet's claims in much humbler terms than practice justifies. An unfortunate legend has grown up that consultation has been omitted in certain executive transactions of the greatest moment. The Louisiana purchase and the Emancipation Proclamation (*see*) have become stock examples, although facts showing that the Cabinet was not ignored or overlooked are matters of common knowledge. President Jefferson himself did not know of the Louisiana purchase, until after the commissioners had closed with the Emperor's proposition. The lesser project of acquiring New Orleans had been previously discussed with the Cabinet, as the ratification of the treaty was afterwards. The Emancipation Proclamation was, except in points of detail, President Lincoln's unassisted act; but everybody knows that the document was read to the Cabinet. And the President's resolve to take the step had been preceded by much informal discussion. Real cases there have been of failure to consult the Cabinet; but they are of small account before the imposing transactions that are wont to be instanced. President Polk refrained from consultation about the veto of a river and harbor bill, because he had made up his mind that he could not sign it. President Hayes once announced a policy and carried it out, without laying it before his advisers, because he knew beforehand that they would be opposed to it. President Grant, in his naiveté about government by deliberation, either ignored or misled his Cabinet, when he authorized General Babcock to negotiate for the annexation of San Domingo. And Secretary Fish, of the State Department, would have laid down his office for the affront, had not fears for the integrity of the Republican party constrained him. The very style and manner in which such instances are recorded serves to show that they are departures from the usual order.

Sanctions for Existence.—Technically the existence of the Cabinet is voluntary with the President; but it has strong sanctions in the unwritten law. The sentiment of the country demands that the single executive shall be plural in deliberation. When the Government under the Constitution had only rounded out its first decade, the dispersed condition of the executive under President John Adams, who was much of the time away from his advisers, and withheld his counsels while he was with them, called forth severe criticism from both parties, and was one cause of the Federalist downfall. For three quarters of a century, the collective existence of the Cabinet was somewhat irregular; but it was seldom interrupted. Jackson held no Cabinet meetings during the first two years of his presidency, with the result that a Congresisonal lobby, representing his own section of the country, requested him to observe the practice of his predecessors. In the second year of the Civil War, the collegiate Cabinet was not sufficiently in evidence to satisfy certain leaders, and a powerful lobby from the Senate waited upon President Lincoln about the matter.

There is no elasticity as to what particular officers shall sit in the Cabinet. Neither is there any mixing of outsiders in its counsels. Persons with information to give have sometimes met with it, most recently in the Spanish-American War of 1898; but such an event is regarded as a special consultation, even though it should occur at the time and place of a regular Cabinet meeting. Extra-Cabinet advisers sometimes become very conspicuous, and all Presidents have them. Congressional intimacies are necessitated by the separation of executive and legislature. Washington was, for a little while, represented in the lower house by Madison. The President's position as head of the party also creates a need of advisers outside of his official household, although the Post-Office is a manager's portfolio. Amos Kendall and Thurlow Weed are the great examples of the type. The prestige of the official Cabinet has sometimes been made to suffer for the influance of such characters; but a "Kitchen Cabinet" (*see*) is never upheld by public sentiment. The Cabinet has once been recognized by statute. This occurred in the General Appropriation Act of February 26, 1907, where it is called by name in the clause that fixes the salaries of its members.

See Administrative Decisions; Congress; Congressional Government; Executive and Congress; Executive and Executive Re-

FORM; EXECUTIVE DEPARTMENTS; PRESIDENT, AUTHORITY AND INFLUENCE OF; PRESIDENT, CONSTITUTIONAL POWERS OF; REPORTS OF HEADS OF DEPARTMENTS; departments by name.

References: M. L. Hinsdale, *Hist. of the President's Cabinet* (1911); H. B. Learned, *The President's Cabinet* (1911); B. Harrison, *This Country of Ours* (1897), chs. x, xi; J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, ch. ix; J. H. Finley and J. F. Sanderson, *The Am. Executive and Executive Methods* (1908), ch. xvi. MARY L. HINSDALE.

CABINET SYSTEM IN CITY GOVERNMENT. In several American cities an endeavor has been made to create, by calling together at regular intervals the heads of the more important administrative departments, a sort of "mayor's cabinet" which is intended to perform, in its smaller sphere, the functions entrusted to its prototype in National Government. The mayor's cabinet has advisory powers only and deals merely with such questions as the mayor may place before it. Its usefulness is chiefly in the way of securing some coordination in the undertakings of various departments. The arrangement has some distinct advantages but it has seldom been put into operation in a serious, permanent way. In most cities the meetings of department heads are held at very irregular intervals and they exert but little influence upon the general policy of the administration. **See** CHARTERS, MUNICIPAL; MAYOR AND EXECUTIVE POWER IN CITIES; MUNICIPAL GOVERNMENT, ORGANIZATION OF, IN UNITED STATES. W. B. M.

CABOT, GEORGE. He was born at Salem, Mass., December 31, 1751, and died April 18, 1823. He became a successful ship-master and merchant and was elected a member of the Massachusetts convention which adopted the Federal Constitution, 1788. He served as United States Senator from that state, 1791–1796, was generally recognized as an authority on economic and commercial affairs and framed the Fugitive Slave Act, 1793. He was the friend of Washington and of Hamilton and through his letters and advice was a leader in the Federalist party. He became the recognized head of a group of this party, called the "Essex Junto," who were in opposition to President Adams. His extreme conservatism led him to distrust democracy, which he held "to be the government of the worst." December 15, 1814, he was chosen president of the Hartford Convention. **See** MASSACHUSETTS. **Reference:** H. C. Lodge, *Life and Letters of George Cabot* (1877). J. A. J.

CALENDAR OF LEGISLATIVE BODIES. A calendar is a register containing a list of the bills which have been reported from committees and which are ready to be considered in their turns. The rules of the national House of Representatives (Rule XVII) provide for three regular calendars. First, a calendar of the committee of the whole house on the state of the Union, popularly known as the "Union calendar," upon which are placed all revenue, general appropriation bills, and bills of a public character directly or indirectly appropriating money or property. All such bills are considered in committee of the whole. They are highly privileged, that is, they take precedence over all other bills and may be called up for consideration at any time. Second, the house calendar, upon which are placed all bills of a public character, not raising revenue or appropriating money. The committees reporting these bills are called in alphabetical order at what is known as the "morning hour." Third, a calendar of the committee of the whole House, upon which are placed all bills of a private character. This is popularly known as the "private calendar," and it contains bills reported by such committees as those on claims, and on pensions. Bills on this calendar are in order every Friday.

Besides the regular calendars there are several special calendars. One of these is the "calendar for unanimous consent" created in 1909. After a bill has been placed on either the House or Union calendar, any member may ask for unanimous consent to have it placed on the special calendar and, if the consent is given, it is so referred. On certain days it is in order to move for a suspension of the rules and pass such bills by unanimous consent. In 1909 the House created a "calendar of motions to discharge committees," the general purpose being to prevent the "pigeon holing" of bills by compelling committees to report bills referred to them. The state legislatures all have their calendars, the number and kind varying among the different states.

See CALENDAR WEDNESDAY; MORNING HOUR; REPORTS OF COMMITTEES; RULES OF CONGRESS; RULES OF LEGISLATIVE BODIES.

Reference: A. C. Hinds, *House Manual* (1909), §§ 729–732, 847.

JAMES W. GARNER.

CALENDAR WEDNESDAY. Calendar Wednesday is the day set apart by a rule of the House of Representatives adopted March 1 and 15, 1909 (Rule XXIV, § 4), for the consideration of public bills, excepting those that are privileged under the rules. One day a week was thus set apart because the morning hour (*see*) had been too frequently interrupted by privileged business. **See** CALENDAR OF LEGISLATIVE BODIES; RULES OF CONGRESS. **References:** *Congr. Record*, 60 Cong., 2 sess., 3567–3572; *ibid.*, 61 Cong., 1 Sess., 22–34.

A. N. H.

CALHOUN, JOHN CALDWELL. John C. Calhoun was born in Abbeville district, S. C., March 18, 1782, and died in Washington,

March 31, 1850. After a short attendance at Waddell's school in South Carolina, Calhoun was sent to Yale where he graduated with high honors in 1804. He next studied law at Litchfield, Conn., but he returned to upper South Carolina and began the practice of his profession in 1807. He entered the state legislature in 1809 and became a member of the national House of Representatives in 1811. Joining the "young Republicans" he took the lead in bringing on the War of 1812. At the close of that struggle, Calhoun was the foremost nationalist in Congress, demanding a larger army and navy, a new national bank, a protective tariff and a comprehensive system of internal improvements. From 1817 to 1825 he was a member of the Monroe Cabinet. He was elected Vice-President of the United States in 1824. Reëlected Vice-President in 1828, he was the foremost candidate for the succession in 1832. The break with Jackson in 1830–31 caused his retirement. Meanwhile South Carolina prepared to nullify the obnoxious tariff of 1828 and Calhoun became the leader of the movement henceforth known as "nullification." Entering the United States Senate in 1833, he became at once the foremost champion in the country of the states' rights and strict constructionist teachings. He remained in the Senate, with a short intermission, 1843–45, till 1850. When the slavery question became acute in 1837 he introduced and carried his famous resolutions which became the platform of Southern pro-slavery men. During the same year he espoused the cause of Texan annexation which he made a principal object of his labors till 1844, when President Tyler called him to a seat in the Cabinet with the avowed purpose of carrying out this object. He returned to the Senate in 1845 and aided in the settlement of the Oregon boundary dispute, but opposed the President's whole Mexican War program. The Wilmot proviso was especially obnoxious to him and when Congress met in December 1849, he was in his place to fight bitterly President Taylor's plan of admitting California as a free state. His last efforts were devoted to securing for the South the largest possible share in the Mexican cessions of territory and in warning the country of the dangers to come. **See** CONSTRUCTION AND INTERPRETATION; NULLIFICATION CONTROVERSY; POLITICAL THEORIES OF EARLY AMERICAN PUBLICISTS; PRO-SLAVERY; SLAVERY CONTROVERSY; SOCIAL COMPACT THEORY; SOVEREIGNTY OF THE PEOPLE; STATES AS PARTIES TO SUITS; STATE SOVEREIGNTY; TARIFF, PROTECTIVE, CONSTITUTIONALITY OF. **References:** Gaillard Hunt, *Life of John C. Calhoun* (1907); Wm. E. Dodd, *Statesmen of the Old South* (1911); J. C. Calhoun, *Works* (6 vols., 1853–55); "Calhoun by his Political Friends" in *Southern Historical Publications*, VII (1899); J. C. Calhoun, "Correspondence," in Am. Hist. Assoc. *Reports* (1899), II.

WILLIAM E. DODD.

CALIFORNIA

Settlement and Early Government.—California is 780 miles in length and varies in breadth from 150 to 350 miles. Spanish exploration began with Cabrillo in 1542–43, but no real settlement occurred until Franciscan missions were established, twenty-one in number, between 1769 and 1823. The government was paternalistic, though plans for pueblos (corporate towns) and presidios (garrisoned places) were formulated by Spain. A military governor at Monterey held central authority, but the missionary fathers dominated the government until 1834 when Mexico, of which California was then a province, appointed civil *administradores* for mission property. Confiscation of mission estates by Mexican and Spanish settlers, decay of missions, and confusion in government ensued.

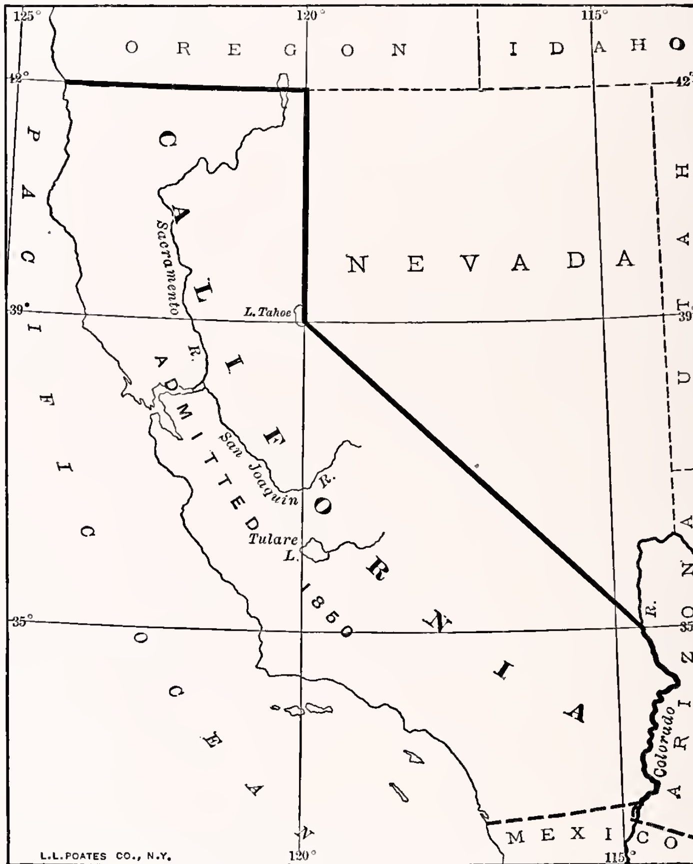
Annexation.—Foreign adventurers and merchants appeared after 1800 in California, and with 1841 overland emigrant trains increased the foreign element. Distance from Mexico aided intrigues for independence, or for a foreign protectorate, and British and American consular officials desired their countries to secure the land. The British Government refused to sanction any step beyond encouraging California to assume independence. Hence, when the Mexican War began the province was easily seized by the United States, the American flag being raised at Monterey by Commodore Sloat, July 7, 1846. Three weeks previous, June 14, a party of Americans, sanctioned by the explorer Frémont, had raised the "Bear Flag" of Californian independence at Sonoma, but this was lowered on hearing the news from Monterey. By the treaty of Guadalupe-Hidalgo with Mexico, 1848, California was ceded to the United States (*see* ANNEXATIONS TO THE UNITED STATES).

Gold Discovery and First Constitution.—Gold was discovered on January 24, 1848. The rush of gold-seekers increased the population in one year from 26,000 to nearly 100,000 (1850). The first need was a settled mining law and this was established by the miners themselves, whose customs and rules created the mining law for the United States west of the Mississippi. This is California's most important contribution to American government. On call by the military governor, a convention met at Monterey, September 3, 1849, and framed a state constitution, modeled on those of Iowa and New York, which prohibited slavery. It

was ratified by the people, November 13, 1849, but the state was not admitted until September 9, 1850, her admission forming a part of the slavery compromises of 1850 (*see*). The state capital was at San José, 1850; Vallejo, 1851–53; Benicia, 1853–54, and Sacramento, permanently, 1854.

Constitution of 1879.—Hard times, Chinese labor competition, railroad monopoly, and economic pressure on the small farmer and newly arrived emigrant, combined in 1878 to create a political attack upon the Chinese and capital. An agitator, Denis Kearny, gave his name to the movement, and "Kearnyism," disrupting political parties, secured a constitutional convention, in which there were fifty workingmen's delegates from San Francisco, eighty-five "non-partisans" elected by the farmers, nine Republicans, and eight Democrats. A new constitution was submitted to and adopted by the people, May 7, 1879. Regarded by contemporary opinion as extremely radical, the movement had not in fact any socialistic or revolutionary consciousness. Fear of legislative corruption resulted in placing in the constitution much law usually left to the legislature, thus requiring popular amendment before alteration. This feature, and Chinese exclusion (*see*), constituted the only permanent change from previous conditions, for a reaction in 1880, restored the old political order. Since 1882, by treaty with China and by federal enactments, Chinese labor exclusion has been in force.

State Government.—The following description of the present government includes the remarkable changes by law and the amendments of 1911 (indicated by dates). The executive officers of the state are: governor, lieutenant-governor, secretary of state, comptroller, attorney general, surveyor general; each elected for four years. The legislature consists of a lower house of assembly of eighty members, elected for two years, and a senate of forty members, elected for four years, one-half retiring every two years. Legislative sessions are biennial, divided into two parts. In the first, which may not exceed 30 days and must be followed by an adjournment for at least 30 days, no bill may be passed except by a two-thirds vote. In the second, no bill may be introduced except by permission of a



BOUNDARIES OF THE STATE OF CALIFORNIA

three-fourths majority. If the governor disapproves of a bill he may return it, and unless passed by a two-thirds majority of each house, the bill fails. If the governor withholds his signature but does not return a bill within ten days, it becomes a law, unless the legislature adjourns within the ten days, in which case the governor must sign within thirty days, or the bill lapses. In appropriation bills the governor may veto separate items.

The judiciary consists of: (1) supreme court, composed of a chief justice and six associate justice, elected for twelve years—two associate justices are elected every four years; (2) three district courts of appeal, of three judges each, elected for twelve years by the electors of the district, one being chosen every four years; (3) superior courts, at least one for each county, elected for six years. Judges of these three classes are removable by concurrent resolution of both houses of the legislature on a two-thirds vote of each house. No judge of these classes may draw salary except on oath that no cause remains pending and undecided, that has been submitted for a period of ninety days. The assembly impeaches, and the senate tries all state executive officers and the judges of the three higher courts.

Suffrage is granted to residents of the state for one year, of the county for ninety days, and of the election precinct for thirty days. The voter must be able to read the Constitution and to sign his own name. The Australian ballot was introduced in 1891. Direct nominating primaries are mandatory (1909) on party lines except for judicial, school and county officers who are nominated and elected without party affiliation or designation (1913). The Oregon system of electing United States Senators is provided for (1911). Each primary candidate must file a detailed statement of all money contributed, disbursed, or promised in aid of his candidacy (1911). The initiative and referendum on the customary lines exist for state, counties, cities, and towns (1911), and the recall, by popular vote, for all elective officers, including the judiciary (1911). Women have the suffrage (1911).

The principle of local option is applied to liquor legislation, and much of the southern part of the state, with some forty smaller cities in the north, prohibit the sale of alcoholic beverages. Railroads, canals, and other transportation companies are declared common carriers and subject to legislative control. The state is divided into railroad districts and five appointive commissioners have extensive mendatory powers over transportation companies (1911).

Amendments.—Constitutional amendments are proposed in either house of the legislature, or by the use of the initiative, and if approved by a two-thirds vote of each house are submitted to the people and adopted if a majority of votes cast on the amendment are favorable. A constitutional convention may be called if two-thirds of each house desire it, and the people approve; but none has been held since 1879. Many amendments are voted on at state elections owing to the constitutional prohibition of special legislation, and because the constitution contains much law ordinarily left to the legislature. Thirty-three classes of legislation are prohibited to the legislature.

Taxation.—A scheme adopted in 1910, amended 1913, separates state from local taxation. Taxes on railroads, transportation companies, telegraph, telephone, gas and electric companies, banks, saving and loan societies, trust companies, franchises, and on some other property of like nature are exclusively for state purposes. These taxes are in lieu of all other taxes and licenses, state, county, or municipal. The tax is fixed at a certain percentage for each class upon the gross receipts from operation within the state. Railroads pay four and three-quarters, telegraph and telephone companies four and two-tenths, and express companies two per cent. Banks pay one per cent upon the value of shares of capital stock, surplus, and undivided profits. Rates may be changed by a two-thirds vote of all members elected to each house of the legislature. The revenue derived is devoted to maintenance of state government and institutions, but first there must be set aside a sum sufficient for the maintenance of the state public school system, primary and secondary, and the state university.

County and City Government.—The legislature provides for county government under general acts, but may classify counties and differentiate items for each class. In 1910, in fact, there were fifty-seven classes of counties which, with the special charter for San Francisco, permitted differences of government for each of the fifty-eight counties, but by a new amendment (1911) each county is now given power to form its own government. Cities also are organized under general law, but cities of more than 3,500 may adopt a special charter, subject to approval by the legislature. City independence from state control, now to be applied to counties, is a marked feature of California government, for the legislature by habit approves any charter, and cannot afterwards interfere.

Education.—The educational system of the state is, in general, excellent. Legislation in 1913 made radical changes in state supervision of education, abolishing a board of education composed of heads of state institutions, and establishing an expert administration by special commissioners of elementary, secondary, and industrial schools, also providing free textbooks. Inspection and classification of schools is maintained by the State University, which adopted the accrediting system for admission in 1884. The university is at Berkeley with

affiliated colleges of art, law, medicine, dentistry, and pharmacy in San Francisco, and of medicine in Los Angeles. The Leland Stanford, Jr., University, located at Palo Alto, is a privately endowed institution. Both universities are co-educational, but Stanford university limits its women students to 500. Approximately one-third of the support of elementary and grammar schools comes from state funds. High schools with an average daily attendance of over twenty pupils also receive a small state aid. The state also makes considerable appropriations for the maintenance of small country schools.

Political Conditions.—Since the Civil War California has been Democratic five, and Republican seven, times, in state elections. In national politics the state has been normally Republican, though not in 1880 nor in 1892, while in 1912, although 11 out of 13 electoral votes were cast for the Progressive candidate, and the remaining two for the Democratic candidate, the Progressives polled a popular vote larger by only 174 than the Democratic vote. The anti-railroad cry has always been an important factor in politics. The Southern Pacific owns the bulk of railroad mileage and has been accused of manipulating legislation. In 1906 San Francisco was in the hands of a corrupt city administration, which in the earthquake and fire disaster of that year sought its profit. Intense public indignation resulted in prosecutions of both bribe takers and bribe givers. The entire state was stirred. A wing of the Republican party, acting on the issue of "no railroad interference in politics" won in the elections of 1910. The governor and legislature at once showed themselves "progressive" and rapidly formulated laws and amendments to the constitution. In addition to those changes previously indicated by 1911, several important laws were passed; concerning employers' liability, conservation of forests and natural resources, and race-track gambling. Constitutional amendments forbidding the reversal of criminal judgments for technical errors unless such errors have resulted in a miscarriage of justice, and enabling five-sixths of a jury to render a verdict in a criminal case, except where life imprisonment or the death penalty would result, have recently been adopted by the people.

The population of the state was 92,597 in 1850; 1,208,130 in 1890; and 2,377,549 in 1910.

See California and New Mexico, Annexation of; Party Government in California.

References: H. H. Bancroft, *Hist. of California 1542–1890* (1884–1890); T. H. Hittell, *Hist. of California* (1885–1897); E. F. Treadwell, *Constitution of California* (2d. ed., 1907); G. P. Costigan, *Am. Mining Law* (1908); R. D. Hunt, "Genesis of California's First Constitution" in Johns Hopkins University, *Studies* (1895); Series 13, No. viii; J. Bryce, *Am. Commonwealth,* (4th ed., 1910), II, ch. xc; E. Hyatt, *Report of Superintendent of Public Instruction* (1909–10); E. D. Adams, "British Interest in the Annexation of California" in *Am. Hist. Review,* XIV (1909), 744–763; F. Hichborn, *Story of the California Legislature of 1909* (1909); G. L. Rives, "Mexican Diplomacy" in *Am. Hist. Review,* XVIII (1913), 275–294.

E. D. Adams.

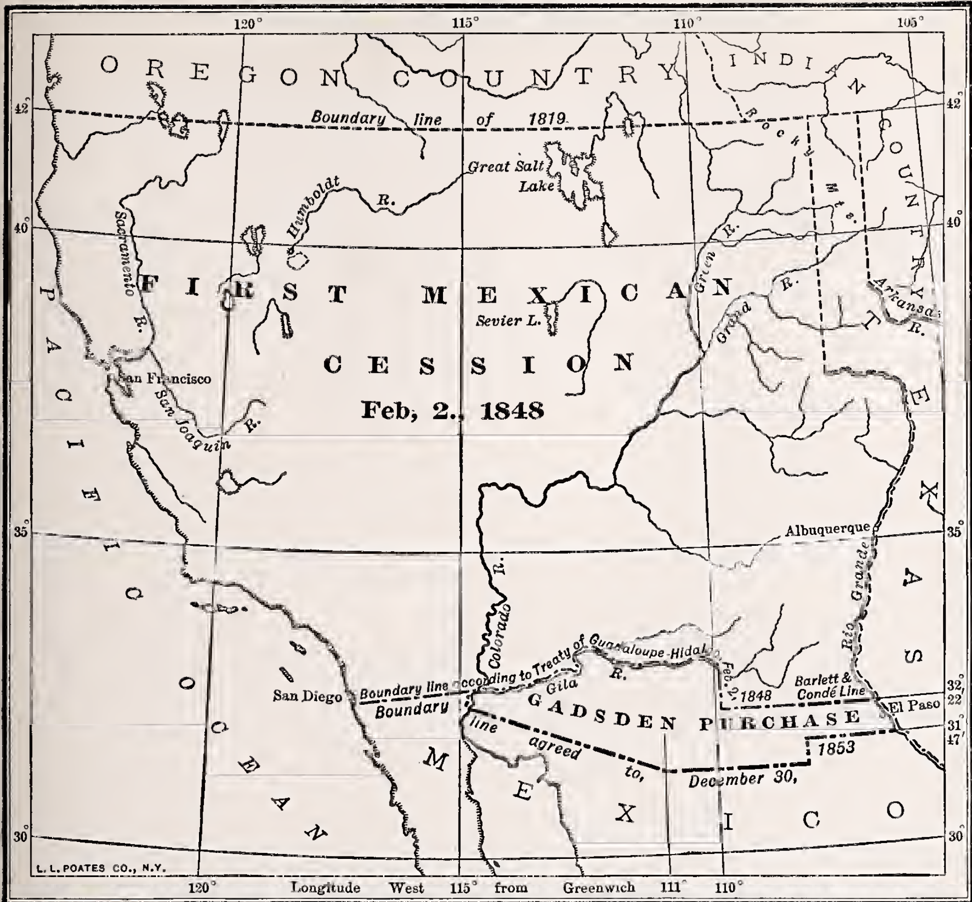
CALIFORNIA AND NEW MEXICO, ANNEXATION OF. Desirability.—New Mexico, one of the first American provinces to be settled by the Spaniards, and California, which was occupied by a few missions late in the eighteenth century, were both coveted by the United States, as it expanded westward, since the former controlled the only southern trade-route across the continent, and the latter possessed the best harbors on the Pacific Coast.

California was especially desired. In 1835 President Jackson offered Mexico $500,000 for the northern half, including San Francisco Bay. Somewhat later, Webster, when Secretary of State, favored a similar proposal. In 1841, Commodore Jones, upon a rumor that the United States and Mexico were at war, took temporary military possession of Monterey.

President Polk's Policy.—When Polk became President, he determined to secure California before his term of office should expire. November, 1845, he appointed John Slidell minister to Mexico with instruetions to offer for California and New Mexico from $25,000,000 to $40,000,000; and in addition to offer the assumption, by the United States, of the American claims against Mexico which remained unpaid. When the object of Slidell's mission on behalf of the United States became known the Mexican Government refused to receive him.

News that a purchase was improbable reached Washington January 12, 1846. The following day General Taylor was ordered to advance to the Rio Grande. The Pacific squadron had already been commanded to seize California the moment war should break out. Frémont was exploring the northern part of the province, and American officials had secret instructions to prevent the country from falling into the possession of any other power, particularly Great Britain, and to give active sympathy to any attempt of the Mexican inhabitants to set up an independent government.

May 9, 1846, the Cabinet agreed that Polk, three days later, should send a special message to Congress urging a declaration of war against Mexico, ostensibly in order to enforce payment of the claims—actually to conquer California and New Mexico. The next day, before the message went in, word came that Taylor's forces had been attacked on the Rio



Territory Acquired by the Annexation of California and New Mexico

Grande, so that Polk's message to Congress was able to state: "war exists by the act of Mexico."

Military Occupation.—Monterey was occupied by Commodore Sloat July 7; 1846, the date subsequently taken by the United States as the official beginning of its possession of the whole province. Shortly before this, American settlers had started the Bear Flag revolt, an attempt to establish an independent state, and had chosen Frémont as leader; but after the seizure of Monterey they recognized the authority of the United States. New Mexico was occupied by General Kearney with practically no opposition. The military commanders established temporary civil governments in both territories, and informed the inhabitants by proclamation that they were to remain permanently under the sovereignty of the United States.

Treaty of Cession.—April, 1847, the President commissioned N. P. Trist to negotiate for a treaty of peace. To facilitate his task Congress had already voted $3,000,000 by an appropriation act to which the House attempted unsuccessfully to add the famous Wilmot Proviso (*see*). Mexico refused the terms offered, the war continued, and Trist was recalled. Some three months later, after General Scott had captured the City of Mexico, Trist resumed negotiations without authority; and signed the treaty of Guadalupe-Hidalgo, February 2, 1848, by which the United States secured California and New Mexico and agreed to pay $15,000,000 and assume all claims.

By this time there had grown up in the United States a strong sentiment in favor of the annexation of all of Mexico. Polk was opposed to this, but wished to secure more territory than that stipulated for by Trist. When the treaty was once made, however, both President and Senate felt that it would be impolitic to reject it. Ratifications of the treaty were therefore exchanged in Mexico, May 30, 1848.

The treaty provided for a new boundary by which the United States obtained, in addition to the recognition of the Rio Grande as the southern limit of Texas, a territory of 522,568 square miles, which now includes the present

states of California, New Mexico and Arizona, except for the southern part, later secured by the Gadsden purchase (*see*), Nevada, Utah and parts of Wyoming and Colorado. It provided also that the Mexican inhabitants who did not elect, within one year, to retain their former allegiance, should be considered citizens of the United States, and should later "be incorporated into the Union of the United States."

There was no formal transfer of the provinces, since the United States was already in possession. The attempt to provide some form of permanent government involved the question of territorial slavery and led to bitter debates in Congress, which raised the question whether the Constitution extends to newly acquired territories without special act of Congress.

The civil administration instituted by military authority during the war continued until 1850, when Congress admitted California as a free state and gave to the remainder of the land ceded by Mexico a regular territorial government.

Constitutional Questions Decided.—The Supreme Court of the United States determined a number of cases regarding the status of conquered Mexican territory. In Fleming *vs.* Page (9 *Howard* 603) it decided that a district in Mexico governed during war by American military authorities, did not thereby become a part of the United States, and remained foreign in the sense of the American tariff laws. In Cross *vs.* Harrison (16 *Howard* 164) it was held that the military government established in New Mexico and California continued legally in force after the treaty of cession, until changed by Congress; and that the United States tariff duties levied under the previous general tariff acts after the news of peace had been received, but before the American customs laws were extended to the district, were legally collected. The court held further (Leitensdorfer *vs.* Webb, 20 *Howard* 176) that the military power could establish local courts which would continue after the cession until Congress altered them; but (Jecker *vs* Montgomery, 13 *Howard* 498) that it could not create courts to pass upon admiralty cases or the rights of the United States.

See BEAR FLAG REPUBLIC; CALIFORNIA; COMPROMISE OF 1850; DEPENDENCIES OF THE UNITED STATES; EXTRATERRITORIALITY; GUADALUPE HIDALGO, TREATY OF; MEXICO, DIPLOMATIC RELATIONS WITH; MEXICAN WAR; MILITARY POSTS; NAVAL VESSELS; NEW MEXICO; PROTECTORATES, INTERNATIONAL; TERRITORY, CONSTITUTIONAL QUESTIONS OF; TERRITORY, ACQUIRED, STATUS OF; WAR, CARRYING ON; WILMOT PROVISO.

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GEORGE H. BLAKESLEE.

CALVIN, JOHN. See POLITICAL THEORIES OF CONTINENTAL PUBLICISTS.

CAMPAIGN FUNDS. See CORRUPT PRACTICES ACT; PARTY EXPENDITURES, PUBLICITY OF; PARTY FINANCE.

CAMPAIGNS, POLITICAL

Definition.—A political campaign is the sustained, aggressive, organized series of operations conducted by the political parties previous to an election, for the purpose of influencing voters in favor of particular candidates.

Presidential Campaigns.—Campaigns antecedent to the election of a president are of the most general interest and call for the most elaborate organization and the most thorough application of means to a definite end. The national committee of each party, which is often composed of the most astute and experienced political managers in its membership, is in general command of the party forces and its chairman, who represents and acts for the presidential candidate, issues orders for the guidance of subordinate officials throughout the great complex machine (*see* COMMITTEES, PARTY). Each state has its state committee, whose chairman is often known as the state "boss" and superintends the local party organization. The various political areas, county or town, city, village and ward, have each their committees, the organization ramifying to the minutest local divisions and all its members laboring in their several spheres of action to the one object of "carrying" the election. "The interdependence of political interests" says Mr. Ford, "is such that local transactions cannot be separated from state and national concerns. If the party is hurt anywhere it feels it everywhere. Needs of adjustment between local and general political interests have thus been created which have gradually evolved a hierarchy of politieal control, with respective rights and privileges that are tenaciously insisted upon." (*Rise and Growth of American Politics*, p. 301.)

Besides the powerful national committee both parties have also a congressional committee holding in the party machine the place which the legislative department holds in the general government and standing for congressional party leadership. The activities of this committee are not confined to the years of the presidential elections; indeed, its members are especially devoted to looking after party interests when congressional elections take place midway between the presidential years, and popular attention is less alert. The importance of these elections is increasingly apparent in respect to party standing and party prospects for the presidential election two years later, and the work of the national congressional committee is seen to be of corresponding consequence.

Methods.—Campaign methods vary greatly from year to year according to the sort of questions presented, and in different localities with the leading characteristics of the population. The spectacular, grotesque and noisy devices for drawing popular attention and stimulating political enthusiasm are of waning effectiveness. The torchlight procession, the barbecue, the picnic, the brass band, parades, marches, rallies, and the display of political symbols, have all helped to manufacture excitement with an uncertain amount of party benefit. Preëminent among campaigns of merrymaking and jollity was that of 1840, when little stress was laid upon differences of principle between the parties and Harrison was carried to the White House on a wave of unreasoning, childish enthusiasm (*see* LOG CABIN CAMPAIGN). Much stress is laid on the value of the campaign literature sent out from the national headquarters of the parties and distributed by means of the local organizations to every nook and corner of the land. These writings may deal seriously with the public questions involved in the coming election, or may be designed merely to influence party antagonism or to fix attention upon false or unimportant issues.

The department of public speaking organizes a series of addresses throughout the country. Public men, sometimes of real eminence, sometimes of mere notoriety good or bad, especially men of wide reputation for oratory, or political influence, bring the force of their names, their gifts and their personality to bear upon assembled multitudes of their fellow citizens and are supposed to elucidate the problems at stake. It is upon the "doubtful" states (*see* DOUBTFUL STATES, PARTY SYSTEM IN) where the party balance is nearly even and where the carrying of the state may determine the choice of the chief magistrate, that these floods of eloquence are most lavishly poured out, the states "sure" for one or the other party being, comparatively speaking, safely left to take care of themselves. Of especial value are the more intimate local campaigns of public speaking for diffusing information and influencing opinion. The so-called "schoolhouse campaign" of 1876, conducted throughout the rural districts of several western states, was strictly educative in purpose and did much to develop sound views upon problems pertaining to the currency. Neighborhood meetings were held in country schoolhouses, usually addressed by some one personally known to the audience and able to understand and often to remove the difficulties in the minds of those who sincerely desired to vote intelligently upon intricate and far-reaching questions.

Candidates for office are usually expected to appear upon the campaign platform to state and advocate the principles for which they stand, sometimes to explain an unsatisfactory political "record" or to make promises for the future. It is not, however, the rule for candi dates for the presidency to step down into the arena and personally to lead the combat. Still, instances are not wanting of their taking some share in the public speaking. General Scott, who stood for the Whigs in 1852, is said to have spoken in the interest of his own candidacy. In 1860 Douglas made an extensive canvass for the Union wing of the Democratic party. Blaine, in 1884, appeared before large audiences to advocate Republican party principles and his own election. Bryan has become famous for his active labors in his several candidacies. Cleveland, Roosevelt, Taft and Wilson have given addresses during their own campaigns, and Roosevelt and Taft have made active pre-convention campaigns for renomination.

In former days more frequently than of late the joint debate was found to be an effective agency for the settling of public opinion. Candidates or other orators from the contending parties discuss the questions at issue before eager assemblies, promulgating and answering arguments and appealing to the reason, the prejudices or the passions of their hearers. The joint debate has been especially popular in the southern states. The most celebrated example in our political history of this form of public address is the great Lincoln-Douglas debate of 1858, in Illinois, when the two really strong and able men, contending for a seat in the United States Senate, debated questions of national concern and powerfully influenced public sentiment both within and outside of the state.

Although much of the campaign speaking is mere "buncombe," there have been times of general and genuine interest in important public affairs when serious and able argumentation has directly affected national opinion—when a real "campaign of education" has been conducted. Notable instances are the campaigns of 1856, when popular interest was riv eted upon the question of slavery extension and the admission of Kansas to statehood; that of 1860, when the maintenance of the Union

was in doubt; of 1876, when the people were deeply stirred over the reform of the civil service and the proper treatment of the states which had seceded; and of 1896, when questions concerning the currency and a correct standard of values dominated all others. In contrast with these reference may be made to certain of the campaigns following the Civil War, which were characterized by the forcing to the front of dead issues or matters of minor importance, or by unworthy and disastrous appeals to the prejudices and the passions excited by that fratricidal strife, but which might have yielded to cool and balanced reason.

Bribery and the direct or indirect purchase of votes have no doubt formed a feature of every great campaign, prominent leaders in both parties having sometimes been involved in the disgrace; but direct corruption is not counted among the legitimate party agencies. Many honest and earnest efforts are being made to abate the evil and purify the political machinery.

Canvass of Voters.—Early in an important campaign a careful canvass is made by the local committees and their assistants to ascertain the personal attitude of individual voters. The party leaders become acquainted with practically all the men within their districts and learn how their votes will probably be cast at the election. They look after and seek to persuade the young men about to cast their first votes. They know what motives may induce certain members of the opposite party to change their allegiance, and bring appropriate pressure to bear. About midway of the campaign a second personal canvass is made, and shortly before the election a third. Thus it is often quite accurately known before the polling takes place just what the result will be in a given district. As the presidential campaign nears its end all the agencies for affecting the decision are quickened to the intensest activity. Business is almost at a standstill, a breathless eagerness is in the air; "straw votes" are taken here and there to show which way the wind blows; betting rates are quoted and carefully studied, and the excitement subsides only after the final result of the election is announced.

Recent Conditions.—Within the last few years (1906–1913) the real significance of the campaign has come to lie rather in the factional divisions within the parties than in characteristic political principles distinguishing Democrats from Republicans (*see* DEMOCRATIC PARTY; REPUBLICAN PARTY). The Democratic party has been divided into the two antagonistic wings of "Bryanism" and the older Cleveland-Parker type of democracy. The Republicans contend among themselves as "Regulars" and "Insurgents" (*see*) or "Progressives" (*see*).

See COMMITTEES, PARTY; CONVENTIONS, POLITICAL; ELECTION; ORGANIZATION; VOTERS, CANVASS OF.

References: J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, ch. lxxi; J. B. Bishop, *Our Political Drama* (1904); E. Stanwood, *Hist. of the Presidency* (1898), *History of the Presidency from 1897 to 1909* (1912); J. A. Woodburn, *Political Parties in the U. S.* (1903); J. Macy, *Party Organization and Machinery* (1904); A. Johnson, *Stephen A. Douglas* (1908), ch. xviii.

JESSE MACY.

CANADA, DOMINION OF

Geography.—Canada includes the whole northern half of North America, except Alaska and Newfoundland. In area it is continental. Toronto is in the latitude of Rome, Montreal in that of Milan, and Winnipeg in that of Paris; between the latitude of Winnipeg, itself a city of the Northwest, and that of the fertile Peace River region farther north, the difference in latitude is as great as that between New York and Jacksonville in Florida. So vast a region, naturally, has more than one climate. That of the St. Lawrence region is equable but more severe than the climate of similar latitudes in Europe. The western portion of the central plain which stretches from the Great Lakes to the Rocky Mountains enjoys milder winters than the eastern. On the Pacific coast of British Columbia the climate is moderate and humid. In addition to the Great Lakes, which are divided in ownership between Canada and the United States, there are, in Canada, nine lakes more than a hundred miles long, and thirty-five more than fifty. Owing to the presence of these great bodies of water only a small part of Canada is subject to drought.

French in Canada.—The St. Lawrence River has played a great part in the history of Canada. Of the fur-traders and fishermen who were attracted to its banks the French were the most persistent. In 1534, Jacques Cartier laid claim to Canada in the name of the King of France. For a long time, however, French effort was confined to summer voyages. When, after other tentative efforts, Samuel de Champlain founded a settlement at Quebec in 1608, France had, at last, made a serious beginning in colonization. French colonists did not go to New France in great numbers; one hundred and fifty years after the founding of Quebec Canada had not more than seventy thousand people of French origin. Yet, few in number

DOMINION OF CANADA
Showing changes in internal boundaries
Dominion of Canada, Upper & Lower Canada, Nova Scotia, and New Brunswick united July 1, 1867.
All British Possessions in North America not already included in Dominion of Canada except Newfoundland & its dependencies joined to the Dominion of Canada, Sept. 1, 1880.
GREENLAND
FRANKLIN
Formed 1895
NORTHWEST TERRITORIES
MACKENZIE
Formed, 1895
YUKON TERRITORY
Formed, 1895
HUDSON BAY
UNGAVA
Formed, 1895
Joined to Quebec 1912
LABRADOR
To Newfoundland
Boundary Undefined
RUPERT'S LAND
Purchased & Annexed, Dec. 1, 1869 as the
NORTHERN TERRITORIES
South Boundary of Ungava never defined
Boundary of Ontario defined 1878 assented to by Ontario 1878 accepted by Dom. of Canada 1889
KEEWATIN
Formed, 1876
Addition 1912
Addition 1881
ORIG. PROV.
Adm. 1870
PROV. OF SASKATCHEWAN
Formed Sept. 1, 1905 & admitted
DISTRICT OF SASKATCHEWAN FORMED 1882
DIST. OF ATHABASKA FORMED 1882
DIST. OF ASSINIBOIA FORMED 1882
PROV. OF ALBERTA
Formed & admitted, Sept. 1, 1905
DISTRICT OF ALBERTA FORMED, 1882
BRITISH COLUMBIA
Entered the Confederacy July 20, 1871
Height of Land
UPPER CANADA
LOWER CANADA
NEW BRUNSWICK
NOVA SCOTIA
NEWFOUNDLAND
Pr. Edward's I.
UNITED STATES
ALASKA
PACIFIC OCEAN
ATLANTIC OCEAN
Longitude West from Greenwich
J.L. POATES ENGR'G CO., N.Y.

as these colonists were, they gave French civilization a firm footing in America. New France was ruled under the French civil and the French criminal law; the religious life of France was transplanted to America, and the Roman Catholic Church secured authority and privileges even greater than those it possessed in old France.

The British Conquest.—France and England, warring rivals in Europe, were at strife also in America, where each had the ambition to found a great empire and to drive out its rival. The crowning struggle came in the Seven Years' War (1756–1763). The disparity between the two races was very great and the seventy thousand French proved no match for the English, who numbered more than a million. The French made a gallant struggle, but Great Britain sent overwhelming naval and military forces to Canada, and when the British General Wolfe defeated Moncalm before Quebec in 1759 the end of Franch rule was certain. In the following year the French surrendered at Montreal and the British became masters of Canada. The Treaty of Paris concluded in 1763 made their title finally secure.

The Quebec Act (1774).—The British Government was much perplexed about the system to be established in Canada. Though the French were so few, they were yet almost the only Europeans in the immense territory north of the Great Lakes and the Ohio River. A few traders, chiefly from the English colonies, followed the victorious British armies into the country. The British Government would not hand over the control of Canada to these newcomers, nor leave it in charge of the French inhabitants. After a long delay, an act of Parliament, known as the Quebec Act, was passed in 1774, forming New France into the Province of Quebec. The act established the English criminal law in the province but left the French civil law undisturbed. Full liberty was given to the Roman Catholic Church, including the legal right to collect the tithe from its own adherents. Though a legislature was promised in the future, the government at Quebec remained in the control of officials named by the Crown and was despotic in character.

The American Invasion (1775–76).—The discontent which caused the American Revolution had already become acute when the Quebec Act was passed, and the Revolution greatly influenced the history of Canada. It was natural that the American leaders should plan to draw Canada into common action with themselves. When they sent a force to aid the French Canadians to rise against the British, most of Canada fell into the hands of the invaders. But the Governor of Canada, Sir Guy Carleton, organized a strong defense of Quebec, and the American invasion was a failure. The result of the failure was that, while the revolted English colonies gained their independence, France's former empire in America remained a British possession.

The Canada, or Constitutional, Act (1791).—The triumph of the Revolution led to the settlement in Canada of thousands of Loyalists who refused to give up their British citizenship. Many went to the Maritime Provinces, not then a part of Canada, but a great many others settled on the Canadian side of the Niagara River and along the northern shore of Lake Ontario and of the St. Lawrence River above Montreal. These settlers were not content to live either under the French civil law or without some kind of representative system; and their arrival in Canada was soon followed by a change in the constitution. In 1791 the British Parliament created a second constitution for Canada in the Constitutional Act. It divided Canada into two provinces. Lower Canada, the region east of the Ottawa River, and Upper Canada, the region west of the Ottawa, were to have separate legislatures. In each province there was to be an elective chamber, and also a second chamber, the members of which were to be appointed by the Crown. While the French civil law remained in lower Canada, Upper Canada was to have a system wholly British. In each province the governor sent out from Great Britain controlled the executive.

The Union Act (1840).—Under this constitution a new struggle began. Now, for the first time in his history, the French Canadian had secured the right to vote, and he was resolved to control his own province. In Upper Canada, too, there was a struggle to ensure that the popularly elected chamber should control the executive. For nearly fifty years the agitation continued, and at last it brought armed rebellion. In 1837, Louis Joseph Papineau led a rising in Lower Canada, and William Lyon Mackenzie led one in Upper Canada. The rebellions were promptly crushed, but the outbreaks, coming, as they did, just when the young Queen Victoria ascended the throne, called attention to the evils in the Canadian system. A Radical statesman, the Earl of Durham, was sent to Canada as governor and his masterly *Report* led to a new (the third) constitution for Canada. The Union Act passed the British Parliament in 1840. It abolished the separate legislatures of Upper and Lower Canada and established a new legislature for all Canada. The members of the upper chamber, the legislative council, were to be appointed for life by the Crown, while the members of the assembly were to be elected by the people. By this time the English province was the more important of the two and the avowed aim of the union was to ensure the ultimate supremacy of the English element in Canada.

The British North America Act (1867).—The Union did not solve the difficulty of governing

Canada. For some years after 1840, the governors sent out from England refused to admit the right of the new legislature to control the executive government, even in respect to purely Canadian affairs. At last, however, while the Earl of Elgin was governor (1847–1854) this right was conceded, and henceforth ministries were made and unmade at the will of the legislature. This practise, however, only revealed a new difficulty. The two former provinces had equal representation in the legislature, and, in fear of English domination, the French members held together and insisted that the ministry of the day must have a majority from their province. Thus, in spite of the union, the old political division remained. After being in operation for about twenty years the union proved unworkable. No ministry could remain long in office and deadlock was the result. In view of this situation, the wider union of the whole of British North America began to be talked of. It happened that in 1864 the union of the Maritime Provinces was under discussion. Sir John Macdonald and other Canadian leaders took advantage of this to bring about at Quebec, in 1864, a conference on union of representatives of all the provinces of British North America. The result was an agreement to form a federal union. Acting upon this agreement, the British Parliament passed (1866) the British North America Act creating a fourth constitution for Canada. It came into force in 1867. In the end, Newfoundland (*see*) preferred to hold aloof but, within a few years, all the other provinces, Nova Scotia (*see*), New Brunswick (*see*), Prince Edward Island (*see*), Upper Canada (now Ontario), and Lower Canada (now Quebec) were included in the new federation which took the name of the Dominion of Canada.

The Union of the West with Canada (1869). The Dominion of Canada, as first organized, did not include the present Canadian West. By the Treaty of Utrecht, 1713, France yielded to Great Britain any rights of possession which she had hitherto asserted in the region about Hudson Bay. This gave Great Britain an undisputed title to the lands watered by rivers flowing into that great sea. The Hudson's Bay Company had secured a charter in the reign of Charles II which gave it a monopoly of the fur trade. For many generations the company discouraged agriculture, so that there might be no settlers to disturb the furbearing animals. In time, however, settlement began, and by 1867 there were some thousands of settlers, chiefly on the banks of the Red River in what is now Manitoba. While the colonies in the East remained separated they could not take charge of this great country. It was their union which gave Canada the strength and the resources to control the West. It thus happened that the confederation of Canada was soon followed by the inclusion of the West in the Dominion. In 1869, the Hudson's Bay Company, master of the great region stretching from Hudson Bay to the Rocky Mountains, sold its rights to Canada. From a part of this territory the province of Manitoba was created in 1870. Long after, in 1905, two other provinces, Saskatchewan and Alberta were established. The Hudson's Bay Company had at one time also ruled the British territory on the Pacific Coast; but this had been formed into the separate colony of British Columbia a few years before the Canadian federation was formed. In 1871 this colony joined the Dominion and with this addition Canada stretched from the Atlantic to the Pacific.

The early years of the new Dominion were troubled. British Columbia had entered the union on the condition that a railway should be built across the continent. The undertaking was an immense one for a small population, and delay in carrying it out led to a movement in British Columbia for secession. In 1885 however, the Canadian Pacific Railway was completed. The railway linked together the East and the West and made real their union in one state. Two other transcontinental lines, one a government project, are now (1913) in process of construction.

Already, in 1879, Canada had adopted the policy of a high tariff. This checked imports from the United States and served to build up trade on lines running east and west. It thus happened that when, in 1911, the United States proposed reciprocity in trade the interests thus created in Canada were powerful enough to defeat the plan for freer trade.

Relations with Great Britain.—In recent years Canada has shown increasing self-reliance. All British troops have been withdrawn from the country and Canada has herself begun to share in naval defence. She now treats directly with foreign countries in making commercial treaties; recently, when a difficulty arose in respect to Japanese immigration, Canada carried on negotiations with the Government of Japan. While thus, in actual fact, Canada is rapidly becoming an independent nation within the British Empire, she is still in a position of theoretical subordination. The constitution of Canada—the British North America Act—can be amended only by the British Parliament. In theory, too, the British Parliament is supreme over every part of the British dominions, and any law which it chooses to pass is binding upon Canada. If Great Britain embarks upon a war Canada, too, is at war, though without a voice in the disagreements which may have led to the struggle. Such difficulties may possibly lead, in time, to the control of imperial defence and of foreign affairs by a central body in which Canada is represented. In spite of present limitations, the Parliament of Canada is practically a sovereign legislature. The British

Parliament would pass, as a matter of course, any amendments to the British North America Act desired by the Parliament of Canada. The right of disallowing Canadian acts of Parliament inimical to the wider interests of the Empire is reserved to Great Britain by the British North America Act, but it has been rarely exercised and has practically ceased to exist. An appeal still lies from the Canadian courts to the King's Privy Council in London. On this Council, however, Canada is now represented.

The Race Question.—Like nearly every modern state Canada has a serious racial question. The French Canadians, who were the first to occupy the valley of the St. Lawrence, have proved extremely tenacious of their national ideals. They control the province of Quebec and are now carrying on an aggressive warfare to extend their influence in other provinces. They hold the balance of power in the Canadian Parliament. While this cleavage is to be regretted, it is perhaps not a misfortune for Canada that she should be the scene of rivalry between the two peoples who have taken the lead in European civilization. The total population of Canada in 1900 was almost exactly the same as that of the United States in 1800, and, during the ten years after 1900, the increase was the same as that of the United States one hundred years earlier. It is not unlikely that in the twentieth century Canada will continue to grow in population at about the rate of the United States a century earlier. If so, it will not be very many years before Canada is ranked among the great powers of the world.

See British North America, Diplomatic Relations with; Canadian Provinces; Parliament, Canadian; Responsible Government in Canada; also provinces by name.

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George M. Wrong.

CANADIAN PROVINCES. Enumeration and Nature.—The provinces of Canada are nine in number; Nova Scotia, Prince Edward Island, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia. They form a belt stretching across North America from the Atlantic to the Pacific. The vast region lying between this line of provinces and the Arctic circle is known as the North-West Territories and is divided into four districts: Ungava, Franklin, Mackenzie, Yukon. Of these only Yukon has a sufficient population to be entitled to representation in the Canadian Parliament. Quebec always sends sixty-five members to the federal Parliament and the representation of the other provinces is based upon the proportion of their population to that of Quebec. New provinces are admitted by enactment of the Dominion Parliament. A true federation is a union for common purposes of states which still retain some elements of independence. Canada is rather a state with a federal structure than a federal state. The provinces of Canada have never been independent commonwealths. They possess only the defined powers named in the British North America Act of 1867, all undefined powers remaining with the Dominion. The power of the federal government over the Provinces is greater than that of the United States over the individual states in the Union for it can disallow provincial legislation which exceeds the powers delegated to the provinces or is inimical to the interests of Canada as a whole. While this power is exercised sparingly, it has been used to disallow acts of the legislature of British Columbia restricting Japanese immigration, since this legislation might injure Canada as a whole by embroiling her with Japan. The principle adopted in the United States that each state must have equal representation in the Senate does not apply to the provinces in Canada in the organization of the Canadian Senate.

The federal government pays a subsidy to each province based upon population, and these subsidies form a considerable source of provincial revenue. They range from $100,000 to $240,000 a year in a lump sum to each province. In addition an annual amount equal to eighty cents for each inhabitant is paid over by the Dominion. A movement is now (1913) on foot for an increase in the amount of the subsidies.

Provincial Government.—The provinces vary greatly in population. Prince Edward Island has less than one hundred thousand people, while Ontario has more than two million. There is some variety, too, in the organization of the provinces. Thus, Nova Scotia and Quebec have second chambers in their legislatures, while all the other provinces have adopted the system of a single chamber. Where second chambers exist, the members are appointed for life by the government of the day, as vacancies occur. Most of the legislatures are elected for a period of four years but those of Quebec and Nova Scotia are chosen for five years, and that of New Brunswick is chosen for the odd term of two years and two months. No one is

elected to an executive office in Canada either in provincial or in federal affairs. The executive government is carried on by the Prime Minister and his Cabinet in the name of the King. The Prime Minister remains in office as long as he can command a majority in the popular chamber of the legislature. The chamber elects a speaker who acts as an impartial chairman. An appeal to the people may be made at any time, and it rarely happens that a legislature continues during the full period for which it is elected. Government is administered in the provinces of Canada on principles identical with those of the Dominion. The lieutenant-governor like the governor-general, does not attend the meetings of the Cabinet, and takes no active part in the executive government.

Provincial Powers.—The powers of the provinces are classified under sixteen heads in the British North America Act, among them the important function of amending their own constitutions; and under this provision New Brunswick, Prince Edward Island and Manitoba have abolished their second chambers. Education is in control of the provinces with the limitation that the rights of denominational schools, existing when federation was carried out or established later under constitutional guarantees, may not be interfered with by a provincial government. In case of interference remedial laws may be enacted by the federal Parliament to remove the grievance. The provinces control municipal institutions; licenses to sell spirits; the solemnization of marriage within the province (the right to grant divorce is, however, vested in the federal government, except in the case of one or two provinces); the administration of justice within the province (limited, however, by the right of the federal government to grant pardons and to appoint the judges who are in no case elected); charters to railways within the province (unless these should be declared for "the general advantage of Canada"); and, generally, all matters of a merely local or private nature.

On some subjects the federal and the provincial authority seem to overlap. In cases of dispute, the tenor of the judicial decisions of the British Privy Council has been to uphold provincial jurisdiction. The federal government appoints, and fixes the salaries of, the lieutenant-governors of the provinces, who are not removable for five years, except for cause assigned.

Special Provisions.—While all the provinces have nearly the same rights there are differences, especially in respect to education. Thus, in Ontario, the Roman Catholics have the right to separate schools and the state levies on Roman Catholics the taxes to support these schools; in Quebec, where the state schools are under Roman Catholic control, the Protestant minority has similar rights; and in some of the other provinces a limited right exists to establish denominational schools supported by taxation. Most of the provinces, though not Alberta and Saskatchewan, possess the ungranted public lands within their borders, and thus derive a part of their income from the sale of lands, and of timber and mineral rights.

See Canada, Dominion of; Federal State; Parliament, Canadian.

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George M. Wrong.

CANAL DIPLOMACY

Early Interest in a Canal.—The physical contour of the western hemisphere resembles that of the eastern in the connection of two great areas by a narrow isthmus, flanked on one side by a great sea studded with rich islands. The conviction gained by the Spaniards within thirty years of the discovery of America that the land was continuous from North to South was a disappointment to them, particularly after the settlements of the west coast of Mexico and of South America; but they recognized the strategic importance of the narrow land passages, and planted the town of Panama on the Pacific side of the Isthmus in 1519. As early as 1550 a proposition was made to the Spanish Government to construct a canal somewhere from sea to sea, and rough roads were built at several points, particularly from Porto Bello on the Atlantic side of the Isthmus of Panama, which became an *entrepôt* for trade.

The isthmus question became international when in 1580 Sir Francis Drake explored the Pacific Ocean and touched at points along the coast, and in 1584 when he plundered the rich towns on the east side of the Isthmus. The next step was the descent of a body of English freebooters upon the coast of Honduras about 1660, out of which eventually grew the little colony of Belize. In 1698 Paterson tried to found a Scotch colony at Caledonian Bay on the Isthmus of Panama; but the English Government did not support the project; and the opportunity to throttle the Spanish interocean commerce was lost.

After more than a century of occupation,

often contested, the English nominally gave way by agreeing in 1763 to demolish their fortifications in the Bay of Honduras, and in 1786 Great Britain agreed to give up all territory on the isthmus outside a limited boundary. But this agreement was never carried out, and to this day the English have possessions on the coast which give them an approach to any isthmian route.

American Interest.—By the annexation of Louisiana in 1803, soon followed by that of Florida in 1819, the United States became a gulf power, and an interested party in any commerce going into or through the Caribbean Sea. In the same interval the revolution of the Spanish colonies extinguished direct Spanish interest in the Isthmus; but though Clay in 1825 and President Jackson in 1837 expressed an interest in the subject, it was not till after the military occupation of California that the United States became an active party in isthmian diplomacy through the treaty with Colombia (*see*), ratified in June, 1848.

The sudden development of new routes to California *via* several of the narrow lands pushed forward the project of a canal, of which the United States would plainly make most use. Forthwith it was realized that Great Britain through the possession of Jamaica, of Belize and of a vague authority over the Mosquito (*see* MOSQUITO QUESTION) Indians, inhabiting a stretch of coast which commanded the eastern outlet of the Nicaragua route, had an advantage which could not be ignored. A remoter Franch interest was also manifested in a pamphlet of Louis Napoleon in 1846 declaring that the Isthmus of Nicaragua had a commercial situation as magnificent as that of Constantinople.

Agreement with England.—To counteract the British influence, conventions were negotiated in 1849 with Nicaragua for a canal strip to be fortified by the United States; and with Honduras for a commanding island on the west coast. These unratified conventions were used as a lever to secure the Clayton-Bulwer treaty (*see*) of 1850, which for half a century bound the two powers to a joint responsibility. As the Suez Canal was then only a suggestion the isthmus route seemed likely to be the shortest line to Australia and even to India. The treaty was, therefore, a frank acknowledgment of a nearly equal interest of both powers, which jointly guaranteed the neutrality of the Nicaragua route; abjured any dominion over any part of Central America; and went on to declare that "this general principle should be applied to any other practicable communications, whether by canal or railway."

Period of Indifference.—The expectation was that a canal would be constructed speedily and that other nations would come into this general guaranty. Instead, a line of railroad was built by a private company, 47 miles in length from Aspinwall, now Colon, to Panama, over a divide 330 feet high (*see* PANAMA RAILROAD). For ten years the two countries squabbled over the question whether the treaty required the giving up of the Belize settlement; and of the influence over the Indians of the Mosquito coast. From 1860 to 1881 the question was little disputed. Except for the attempt of William Walker in the fifties to revolutionize Nicaragua, perhaps with a view to annexing it to the United States (*see* FILIBUSTERS TO AID INSURRECTIONS) there was small evidence of discontent with the principle of joint guaranty and neutrality of any canal that might be constructed across the isthmus.

Nevertheless, from 1864 on, Secretary Seward tried to secure a new set of treaties with the Central American powers which would give the United States a privileged status; and his attempts to annex the Danish Islands (*see*) and Santo Domingo (*see*) were part of a general plan to extend the power of the United States into the Caribbean Sea. The only treaties that he secured with Honduras in 1864, and with Nicaragua in 1867, had little effect.

The French in Panama.—A third party to the canal now appeared. From 1861 to 1867 Napoleon III made a desperate attempt to make Mexico a French dependency. Just at that time the Suez Canal was in progress, and when it was finished, opened November 17, 1869, its engineer, De Lesseps, turned his attention to Panama. A concession was secured from the Colombian Government; and in February, 1881, a French company began to dig a canal across the Isthmus of Panama (*see* FRENCH PANAMA CANAL).

This roused the government but not the people of the United States. President Hayes, in 1880, laid down the doctrine that any canal would be a part of our coast line; and that the United States must "assert and maintain such a supervision and authority over any interoceanic canal across the Isthmus . . . as will protect our national interests"; but the American public seemed willing that the Frenchmen should risk their money. Secretary Blaine, in 1881, in irritating dispatches to Great Britain, first ignored the existence of the Clayton-Bulwer treaty; then held that it was no longer in force; and then that it ought to be modified.

Relation of the Suez Canal.—The point of view of Great Britain was profoundly changed in 1882 by the occupation of Egypt, and practically of the Suez Canal, in which the British Government had bought a large interest. A neutralization convention was drawn up for that canal in 1888, but for twenty years was not operative. As possessor of one of the two possible great artificial water-ways in the world, Great Britain was no longer in a position to claim joint control of the American interoceanic water-connection. The Clayton-Bulwer treaty was, therefore, for the time be-

ing, thrust into the background. Inasmuch as the French Government disclaimed any territorial authority over the line of the canal, and the Colombian Government had yielded no sovereignty to the French company, there was no question that needed to be decided while the French were at work.

The Rival Routes.—The work at Panama lagged, and the idea sprang up in America that the Nicaraguan was the more practical route; so that February 20, 1889, an American Canal Company was organized nominally to build a canal across Nicaragua; really to put things in a form where the United States Government would take the responsibility. Up to this time there had never been an extensive and accurate survey of the Isthmus, and various wild ideas as to construction over other routes than the two which were now preëmpted were still afloat. The trans-Pacific railroads (*see* PACIFIC RAILROADS), which for years paid a heavy subsidy to the Pacific Mail Steamship Company not to carry through freight by steamer lines connecting with the Panama Railroad, were understood to oppose any canal; and down to 1903 there was a violent controversy between the advocates of the Panama route and the Nicaragua route.

The war of 1898 with Spain left the United States possessor of Porto Rico, and of the Philippine Islands, two additional arguments for American control of a canal. Meantime the French company had broken down, and gone into bankruptcy December 13, 1888, after spending about $100,000,000 in the works. Revived for a short time, it stopped all construction work in 1899, and finally broke down completely in 1901.

Withdrawal of the Clayton-Bulwer Treaty.—In that year the United States set up a commission of experts who for the first time made accurate surveys of the Isthmus and reported that the Nicaragua route was the best one, because the French company would not sell its property and privileges for a fair price. The Government was already negotiating with England for a withdrawal of the Clayton-Bulwer treaty and on February 5, 1900, England in the first Hay-Pauncefote treaty, assented to the construction of a canal by the United States, under rather strict rules of neutralization. The Senate added amendments permitting the United States to defend the canal. Great Britain gave way and by the second Hay-Pauncefote treaty, December 16, 1901, declared specifically that the Clayton-Bulwer treaty was no longer in force. The canal was "neutralized" so that no act of war should be exercised upon it, but there was no limitation expressed on the construction of fortifications by the United States.

Colombian Negotiations.—January 9, 1902, the House of Representatives, with only two dissentients, passed the Hepburn bill for a government Nicaragua canal; but Senator Mark Hanna came out against that route, and with other Senators secured a modification in the statute of June 28, 1902, so that if the President could buy the French rights for $40,000,000, and get perpetual control of a land strip from Colombia, he might proceed on that route; otherwise he must begin to build on the Nicaragua route.

January 22, 1903, a convention was negotiated with Colombia by Secretary Hay, (see COLOMBIA, DIPLOMATIC RELATIONS WITH) by which the United States was to have a right to construct a canal, together with the "use and control" of a zone of territory along the routes; for which privilege the United States was to pay $10,000,000 down and $250,000 each year beginning in 1913. An unexpected wave of public opinion arose in Colombia and prevented that ratification of the treaty which had been promised by the President of Colombia.

Under the Hepburn Act the President would soon have to begin construction on the Nicaragua route. Four days after the Colombian congress adjourned there was a revolution in Panama, up to that time legally a state in the Colombian confederation. The American authorities, following a number of previous precedents, landed troops for the protection of the railroad, but at the same time under orders from Washington prevented Colombian troops from landing. Three days later, November 6, the United States recognized the new Republic of Panama, an example followed immediately by European countries.

Negotiations with the Republic of Panama.—November 18, 1903, a treaty was negotiated with Panama similar in terms to that which had failed with Colombia, but containing a clause explicitly recognizing the United States "as the sovereign of the territory" and agreeing to the fortification of the canal. In May, 1904, the President, under authority of Congress, created an Isthmian Canal Commission, which governed the Canal Zone through one of its members, known as the Civil Governor of the Canal Zone. The Panama Canal Act of August 24, 1912, provides for the appointment by the President of a governor of the Canal and Canal Zone, to serve four years. Pending the completion of the canal, no appointment was made.

Fortification.—During 1910 and 1911 a widespread discussion was carried on in both the United States and Europe concerning the right to fortify the canal. Authorities differed as to the legality of the act, learned advocates of one side or the other offering their arguments in newspapers and serious reviews. A second side of the problem, altogether strategic, revolved around the question as to the advisability or necessity of fortifying the canal. Here also powerful arguments were advanced *pro* and *contra*. The matter, however, was settled without much official discussion, as

it was evident that the Republic of Panama had yielded to the United States all authority over the Canal Zone and the waterway across it. An act appropriating $3,000,000 for the purpose of fortification against naval attacks was approved by the President March 4, 1911, and work was begun August 7, 1911, under a special division established in the Chief Engineer's office according to plans furnished by the War Department.

The Tolls Question.—An Act "to provide for the opening, maintenance, protection, and operation of the Panama Canal, and for the sanitation and government of the Canal Zone" (H. R. 21969, 62 Cong., 2 Sess.), approved by President Taft August 24, 1912, contained a clause exempting American coastwise vessels using the canal from the payment of tolls. This provision gave rise to a controversy of considerable magnitude between England and the United States. Great Britain claimed that this exemption constituted a discrimination against British and other foreign vessels in contravention of Article III of the Hay-Pauncefote treaty of 1901. The clauses of this article treating of the matter of tolls reads as follows:

> The United States adopts as the basis of the neutralization of such ship canal the following Rules, substantially as embodied in the Convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say:
> 1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens, or subjects, in respect of the conditions or charges of traffic or otherwise. Such conditions and charges of traffic shall be just and equitable.

During Congressional discussion of the act, Great Britain lodged an informal protest with the Department of State against the proposal to exempt American shipping from the payment of tolls, and requested that the bill should be held in abeyance in the Senate until the British Government might have time to file a formal and detailed statement of its views on the subject. A formal protest lodged with the Department of State, December 9, 1912, suggested the submission of the difficulty to arbitration, if it were found impossible to repeal the exemption clause. Bills for this purpose were introduced in the third session of the Sixty-second Congress and the first session of the Sixty-third Congress and diplomatic correspondence between the two countries has continued, but so far without result. The attitude of the United States is not approved by the most influential section of the press, nor by many of the leaders in Congress. Bills for the repeal of the section of the Panama Canal Act exempting American coastwise shipping from payment of tolls have been introduced in both the Sixty-second and Sixty-third Congress.

See Central America, Diplomatic Relations with; Clayton-Bulwer Treaty; Colombian Canal Treaty; Foreign Policy of the United States; French Panama Canal; Great Britain, Diplomatic Relations with; Monroe Doctrine; Neutrality, Principles of; Nicaragua Canal Policy; Panama Republic; Treaties of the United States.

References: W. F. Johnson, *Four Centuries of the Panama Canal* (1906); J. C. Rodriguez, *Panama Canal* (1885); Texts in *Am. Hist. Leaflets* No. 34 (1910); bibliography in A. B. Hart, *Manual* (1908), §§ 80 (lects. 59, 60), 84 (lect. 70), 86 (lect. 89), 196, 223; Channing, Hart and Turner, *Guide to Am. Hist.* (1912), §§ 224, 257, 267; J. B. Moore, *Digest of the Law* (1906), III, 1-26; L. T. Chamberlain, "Chapter of National Dishonor" in *No. Am. Rev.*, CXCV, No. 2 (Feb., 1912); T. Roosevelt, "Right to Dig Panama Canal" in *Outlook*, XCIX (Oct. 7, 1911), 314–18; L. Grahame, "Canal Diplomacy" in *No. Am. Rev.*, CXCVII (Jan. 1913), 31–39; E. E. Sparks, *Nat. Devel.* (1907), ch. xiii; L. M. Keasbey, *Nicaragua Canal and Monroe Doctrine* (1896), chs. ix, x, xii, xv, xviii, xix; J. W. Foster, *Century of Am. Diplomacy* (1900), 461–466; *Am. Year Book, 1912*, 82.

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CANAL RING. A body of men, mainly politicians, who were directly concerned with colossal contract frauds in connection with the construction of the Erie and other New York canals. Messrs. Dennison (Democrat) and Belden (Republican), both of Syracuse, were the leaders of the Ring. Governor Samuel J. Tilden conducted a rigid investigation and disclosed the canal frauds in a message to the legislature, March 19, 1875. The legislature authorized the appointment of a commission of five to investigate the governor's charges. Six indictments followed and the suspension and final removal of the auditor of the canal department. See Canals and other Artificial Waterways; Erie Canal; Tilden, Samuel J. **References:** D. S. Alexander, *Pol. Hist. of the State of New York* (1909), III, 313, 324; John Bigelow, *Life of Samuel J. Tilden* (1895), I, 258 *et seq.*

A. B. H.

CANAL ZONE. The idea of a right of way or a belt of territory somewhere across the Isthmus, in which the United States should have peculiar rights, goes far back in Canal diplomacy (*see*). The germ of it is found in the treaty of 1846 (ratified in 1848) with New Grenada, in which the United States received a guaranteed route across the Isthmus (*see* Colombian Canal Treaty). In Trist's instructions in 1847 he was directed to secure a right-of-way for a railroad through the Isthmus of Tehuantepec, and in the Gadsden treaty of 1853 it was secured. This idea was for about fifty years shut out by the Clayton-Bulwer treaty (*see*), though it appears in

several unratified treaties between 1864 and 1884.

When the Clayton-Bulwer treaty was out of the way Secretary Hay negotiated, with Colombia the Hay-Herran convention of January 22, 1903, by which a belt six miles in width was to be "leased" to the United States. After that treaty failed (*see* Canal Diplomacy) Secretary Hay concluded with the new Republic of Panama (*see*) the treaty of November 18, 1903, by which the United States received perpetual ownership and practically the sovereign control of a strip ten miles wide extending across the isthmus and the entrance waters at both ends (*see* Boundaries of the United States, Exterior).

Congress, by a statute of April 28, 1904, authorized the President to provide a government for the zone, which had now become a part of the territory of the United States. By various orders beginning May 9, 1904, the President placed that government in the hands of the Isthmian Canal Commission, one of whom, General George W. Davis, was designated as governor. This government acted thence forward as the legislative and executive power over the Canal Zone, including the canal works, the health and welfare of the employees, and the Panama Railroad, which is the property of the Government. It provided a water system, cleaned up the cities, and established a system of warehouses and public supplies which has no parallel anywhere else within the governmental system of the United States. After 1907, the head of the civil government was one of the canal commissioners, called Head of the Department of Civil Administration. He and the commission in general report to the War Department at Washington. After the completion of the canal and the consequent dismissal of the Isthmian Canal Commission, the Canal Zone will be governed according to the terms of the Panama Canal Act of August 24, 1912, which authorized the President to appoint a governor of the canal and Canal Zone, to serve four years, at an annual salary of $10,000, to name all other persons necessary to the maintenance and operation of the canal, and to establish tolls; and provided for the administration of justice by one district judge, through the jury system except in cases of equity and admiralty, with appeal to the New Orleans Circuit Court of Appeals, and then to the Supreme Court.

The Panama Canal Zone

See Canal Diplomacy; Clayton-Bulwer Treaty; Colombian Canal Treaty; Dependencies of United States; Gadsden Purchase; Panama, Republic of; Territory, Status of Acquired.

References: "Chapter of National Dishonor" in *No. Am. Rev.*, CXCV (1912); Isthmian Canal Commission, *Annual Reports* (beginning 1904); bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), § 267; A. B. Hart, *Manual* (1908).

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CANALS AND OTHER ARTIFICIAL WATERWAYS

Conditions Controlling Construction and Use.—The extent to which trunk-line canals can be successfully constructed and operated in any particular country is determined by the physical conditions of land contour and water supply. The United States, like the continent of Europe, has a wide range of physical conditions (*see* PHYSIOGRAPHY OF NORTH AMERICA). The valleys of the rivers that drain the Piedmont from Maine to Alabama afford possible routes for canals. The most serious barrier to waterway extension in the United States is not the Cordilleran, but the Appalachian, plateau which makes impossible the connection of the natural waterways of the Atlantic slope with those of the Middle West at any point south of the Mohawk Valley. The Allegheny Mountains separate the two most important groups of American waterways, and also lie athwart the busiest traffic routes within the United States.

The use made of canals and consequently their economic justification are determined by the intensity of the traffic demand and by the relative efficiency and economy of canals as compared with other possible means of transportation. The volume of freight seeking shipment in England during the latter half of the eighteenth century became greater than could be handled on wagon roads, and capital was profitably employed in constructing canals to supplement and connect the natural waterways Similar conditions prevailed from 1815 to 1840, in several sections of the United States; but by the middle of the nineteenth century, although there had been a great expansion of industry and trade, the railroads had become such efficient and economical carriers of freight that it became evident in England and the United States and also in other parts of the world that canals were destined to become a minor part of the general transportation system in all countries.

Since 1890, and particularly since 1900, there has been a marked revival of government support of waterways in many countries. Besides an unprecedented expansion of industry and of domestic and international trade, the rates of freight by rail have risen as a result of the higher prices and wages paid by railroad companies; and at times the railroads have been unable to move promptly all the freight seeking transportation. The unmistakable trend of official and public opinion at present is towards a larger and more systematic development of waterways by the government.

Types of Canals.—In all discussions of the history and economics of canals the different types of artificial waterways should be clearly distinguished. Artificial navigable waterways include: (1) trunk-line canals; (2) canals to overcome obstacles to river, lake or bay navigation; (3) rivers canalized by the construction of dams and locks; and (4) submerged channels to harbors.

Trunk-line canals, again, are of two general kinds—those, such as the Erie Canal, that connect widely-separated natural waterways, and those, like the proposed Pittsburg-Lake Erie waterway, that are constructed to connect some large traffic center with a natural waterway.

The canals receiving most attention in the United States today are, with the exception of the Erie Canal (*see*) in process of reconstruction, those that facilitate or make possible the use of the larger lakes, rivers and bays—such as the short canal and the locks at the Sault Ste Marie, and the Louisville Canal around the falls of the Ohio River.

The largest river canalization project now being carried out is that of providing a low-water channel of nine feet depth in the Ohio River from Pittsburg to Cairo by the construction of fifty-four dams and locks. For much of the distance from Pittsburg to Louisville there will be slack-water navigation during the lowest stages of the river. The canalization of the Tombigbee and Warrior rivers of Alabama and of the Illinois River are other evidences of the preparation of the streams of the country for future navigation uses.

Canals of the fourth type—submerged channels leading to harbors—are being increased in number and in depth and length with the growth in our maritime and lake commerce and the enlargment of vessels. Few ports of the world are so situated as not to require artificial channels to connect them with deep water (*see* HARBOR SYSTEMS).

Canal Policy 1800–1860.—The period of active canal building in the United States extends from the close of the War of 1812 to the opening of the Civil War, although a decade of agitation and promotion had preceded the War of 1812. When construction began, after 1815, works were carried on by several states and by numerous corporations. Canals were built for three general purposes: (1) to connect the bays along the Atlantic Coast from the Carolinas to New England; (2) to join the seaboard with the Great Lakes and Ohio River; (3) to unite the seaports with the anthracite eoal fields and with the Piedmont.

The Federal Government did not at first undertake the construction of roads and waterways. Congress did not think it could constitutionally engage in works of internal improvement within the states, while Presidents Madison and Monroe thought the Constitution

did not permit Congress to aid the states or corporations chartered by the states in road and canal building. Little assistance was given by the United States until the administration of John Quincy Adams, and the policy of national aid was soon interrupted by the "strict construction" views of President Jackson and the Democrats; thus it was that, until after the Civil War had brought about a larger degree of centralization of power in the National Government, the work of improving rivers and building canals was done mainly by the states and private corporations.

Canal Construction in the East.—The Dismal Swamp Canal was opened for traffic in 1828, the Chesapeake and Delaware in 1829, and the Delaware and Raritan in 1838. An inland waterway between Long Island Sound and Boston is still in the future. A second and larger canal south of Norfolk, the Chesapeake and Albemarle, was put into service in 1860.

In the construction of trunk-line canals to connect the seaboard with the Middle West, New York State took the lead. After some years of agitation, the Erie Canal was started in 1817, and completed in 1825 (*see* ERIE CANAL). The New York system of canals also included a waterway from Troy to Lake Champlain, and various lines branching off from the Erie Canal. At the present time the canals in operation in New York have a total mileage of 622 miles; while 460 miles have been abandoned (1913).

Between 1826 and 1834, Pennsylvania established a composite rail and water line consisting of a railroad from Philadelphia to Columbia on the Susquehanna, of a canal thence up the Susquehanna and Juniata rivers to Hollidaysburg, of a portage railroad over the mountains to Johnstown, and of a canal from there to the Allegheny River and Pittsburg. The state also built other canals along the Susquehanna and Delaware rivers, while chartered corporations improved the navigation of other streams. Of the total mileage constructed in Pennsylvania, 909 miles have now been abandoned and 198 miles are still in more or less active operation.

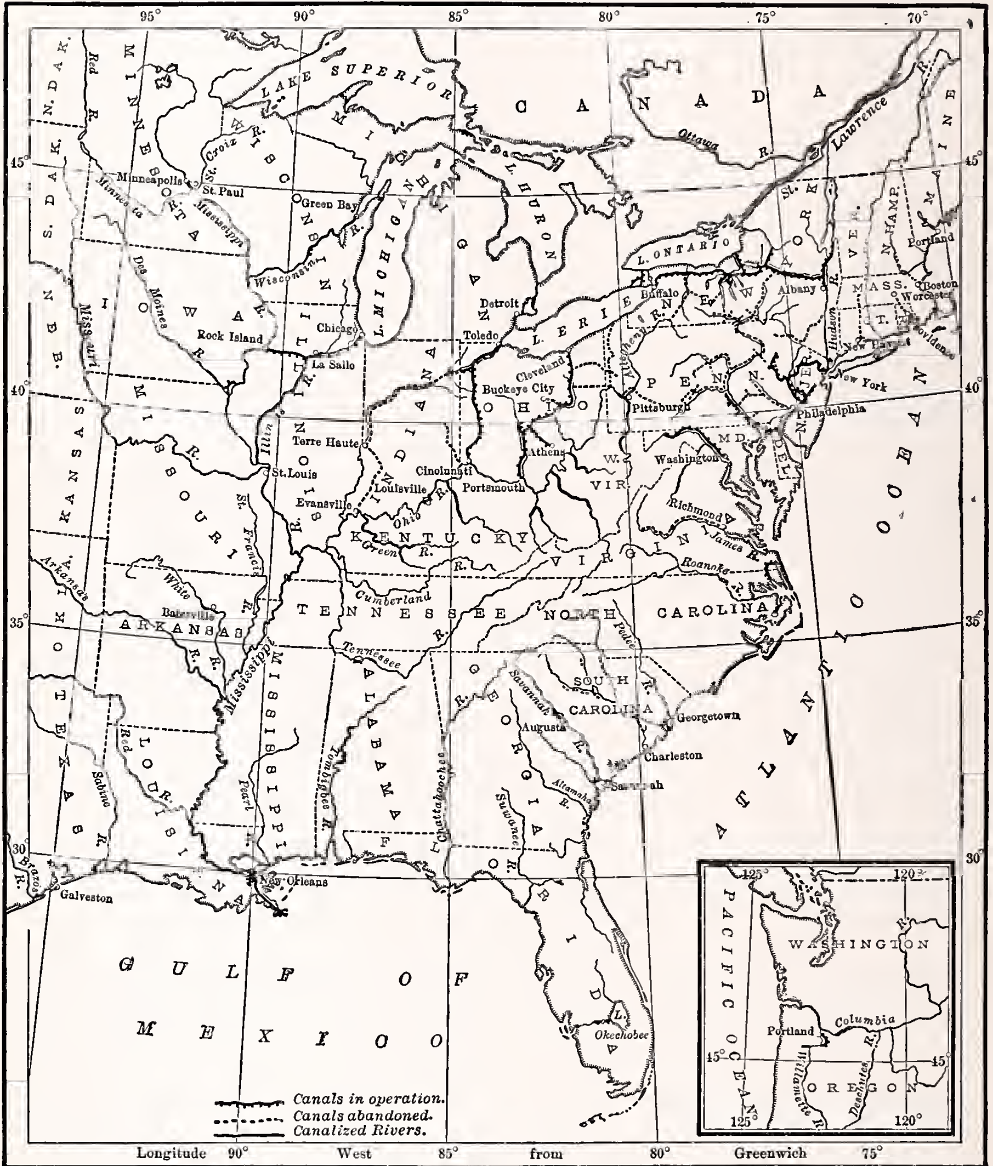
The Chesapeake and Ohio Canal along the Potomac made slow progress. The company that Virginia and Maryland formed in 1784 upon recommendation of Washington proved unable to carry out the work and failed in 1822; but a new stock company in 1829, with national, state, and municipal aid undertook the construction of a canal, by a revised line, along the Potomac to Cumberland. The work was not completed until 1850, and, as the Baltimore and Ohio Railroad was finished through to the Ohio River three years later, the canal never had much share in the traffic to and from the West. Its tonnage consisted mainly of coal from the mines comparatively near Cumberland.

Several canals whose main purpose was to connect the anthracite coal fields with tidewater were built by corporations. The Delaware and Hudson Canal from Honesdale, Pa., to Rondout on the Hudson near Kingston was opened in 1829. The Lehigh River was made capable of floating "arks" of 25 tons in 1820; and nine years later it was paralleled by a canal. The Delaware Division Canal from Easton to Bristol, Pa., was completed in 1830. The Morris and Essex Canal from the Delaware opposite Easton to New York was authorized in 1824 and completed to Newark in 1831. The Schuykill Canal was opened in 1825; and, although this waterway together with the Union Canal connecting the Schuylkill and Susquehanna rivers was considered as part of a route to be taken by traffic to and from the West, its traffic consisted almost entirely of coal. The Delaware and Raritan Canal from Bordentown, N. J., near Trenton, to New Brunswick was one link of the chain of coastal canals, but it, also, was of special importance as a coal carrier.

Canals in the Middle West.—In the Middle West, canal building was most actively carried on by Ohio, Indiana and Illinois—the main purposes of the canals being to connect the Great Lakes with the Ohio and Mississippi Rivers and to provide the interior sections of the states traversed with an outlet to eastern and southern markets. The more important canals were the Ohio and Erie and the Miami and Erie across Ohio, and the Illinois and Michigan in Illinois. The Ohio and Erie Canal, constructed 1825–1833, connects Cleveland and Columbus with Portsmouth on the Ohio River; its length is 326 miles. The Miami and Erie, built 1825–1833, joins Cincinnati and Toledo, a distance of 269 miles. Other canals with a combined length of 266 miles formerly operated by Ohio have been abandoned. The Indiana canals had a total length of 453 miles, of which none is now in operation. The Illinois and Michigan Canal, completed in 1848, extends from Chicago, ninety-six miles, to La Salle at the head of navigation of the Illinois River. Another barge canal in Illinois—the Hennepin Canal from Hennepin on the Illinois River to Rock Island on the Mississippi—though discussed in Lincoln's day was not begun until 1892, and then by the United States Government. It was completed in 1907. The Mississippi River and the Great Lakes were also connected about 1850 by a canal at Portage, Wisconsin, where the Fox and Wisconsin rivers are only two miles apart; but the Wisconsin River was never really navigable and the route, although completed for traffic, was not used.

The Illinois and Michigan Canal is now antiquated and practically unused; but the construction of a modern barge waterway or a ship channel from Chicago to St. Louis and beyond has been authorized by Congress. The

Chieago drainage eanal opened by Chieago in 1900 to Lockport on the Des Plaines River, a distanee of 34 miles from Lake Miehigan, provides the first seetion of a Lakes-to-the-Gulf waterway. This waterway, if established, will eonsist mainly of the canalized Illinois river War. The eanals in the South of present and prospeetive importanee are (with the exeeption of those around the obstruetions to navigation of the Tennessee River) those along the coast of North Carolina, Florida and Texas, and those in the vicinity of New Orleans.



CANALS IN SERVICE AND ABANDONED

and of the improved Mississippi (*see* LAKES-TO-THE-GULF WATERWAY; WATERWAYS, NATURAL, REGULATION OF).

Canals in The South.—In the southern states only a few canals were construeted and they were short. The rivers were largely used both before, and for sometime after, the Civil

In all, about 4,500 miles of canals have been built in the United States, ehiefly between 1820 and 1850. During reeent years, some important new works have been exeeuted; but many of the old small-dimension eanals have been put out of serviee. At the present time about 2,200 miles of eanal are in aetive operation.

Causes of the Decline in Canal Navigation.—Half of the canal mileage built in the United States is no longer used and most of the other half has comparatively little traffic. The freight once carried on the canals and rivers is now moved by rail for the reason that the present-day railroad is, for most items of the traffic and for shipments from most points, the more efficient and more convenient carrier. The principal trunk-line canals were constructed either before railroads were built or before the technical development of the railroad had indicated that bulky freight could be transported as satisfactorily and cheaply by railroad as by canal. The present highly efficient system of railways in the United States, upon which fifty-ton cars are sometimes moved in fifty-car and one hundred-car trains, has made possible competition for bulky freights; and the system of shipment in car-load units, from any station in the United States to another station, without regard to seasons or depth of water, gives an incomparable advantage to the railroad.

Business conditions change with the development of industry. More commodities require speedy transportation; more manufacturers and traders demand facilities for shipping directly from plant to plant or warehouse; a larger share of the total volume of industry and trade must be carried on at places that have no water transportation facilities. The railroad affords a more flexible and adaptable system of transportation than the waterway does; and business today is for the most part organized on the basis of the transportation facilities provided by the railroad system of the country.

In general, transportation by water, when possible, is cheaper than by rail and the rates on canals, rivers and lakes are less than on railroads. Rates, however, are only one factor affecting the relative use of railroads and waterways. The facilities offered or the services rendered are the real determinant between rival systems of transportation.

This, however, does not mean that waterways have no longer a field of usefulness. The railroad has made of little use the antiquated waterways located and constructed a half century and more ago, and has confined the technically up-to-date waterway to traffic services more specialized than those formerly rendered. The artificial waterway still has a definite field of usefulness especially as a carrier of bulk traffic: (1) between otherwise disconnected commercially important natural waterways; (2) between an actively used lake, river or port and a relatively near industrial center having a large volume of inbound and outbound tonnage; (3) between two large industrial cities or sections so located as to be readily connected by canal. A brief reference to the works now in progress and in contemplation in the United States will indicate the present place of the canal or other artificial waterway in the general transportation system of the country.

Existing Canals and Projects Under Way and in Contemplation.—Since 1870 the United States has made regular and relatively large appropriations to improve harbors and rivers, but, with the exception of the Illinois and Mississippi Canal, it has constructed no canals other than channels leading from the sea to ports and canals to obviate obstructions to river, lake and bay navigation. Along the seaboard, the United States has recently enlarged the canal connecting Pamlico Sound with Beaufort, it has acquired three canals on the Texas coast and has connected Puget Sound with Lakes Union and Washington at Seattle. A private corporation is constructing a canal across the Cape Cod peninsula from Buzzard's Bay to Massachusetts Bay. The navigation of rivers has been aided by keeping up to traffic requirements the canal around the falls in the Ohio River at Louisville, by maintaining the canal past the Des Moines Rapids in the Mississippi River near Keokuk, by constructing canals around three shoal sections of the Tennessee River, and by opening the canal at the Cascades (1896) in the Columbia River. The obstructions in the Columbia above the Dalles are also to be overcome by means of a canal.

The American canal with the greatest influence is the stretch one and three-fifths miles long, at the rapids in the Sault Ste. Marie River, connecting Lakes Superior and Huron. The state of Michigan constructed the first canal at this point in 1855. In 1870 the canal was turned over to the National Government which since then has thrice increased the dimensions of the canal and its locks. The Canadian Government, in 1895, completed a canal on the Canadian side of the Sault Ste. Marie. Of scarcely less importance to the commerce of the Great Lakes than the "Soo" canals in the St. Clair Flats Canal, one and thirty-seven hundredths of a mile long connecting Lakes Huron and Erie. Two other canals of service to the shipping of the Great Lakes are the Sturgeon Bay Canal across the narrow peninsula separating Green Bay from Lake Michigan, and the Portage Lake, or Keweenaw-Lake Superior Canal. All the canals connected with the Great Lakes are waterways belonging to the United States.

The state of New York is enlarging the Erie (*see*) and Champlain canals to accommodate heavy barge traffic. No other state is engaged in canal construction, but New Jersey and Illinois have offered to aid the Federal Government in canal building. New Jersey has appropriated $500,000 to purchase the way for a canal connecting the Delaware and New York bays, should the United States decide to construct the waterway; the people of Illinois have sanctioned a loan of $20,000,000, one

purpose of which is to aid in carrying out the project of a larger waterway from the Lakes to the Gulf (*see* LAKES-TO-THE-GULF WATERWAY).

Revival of Waterway Development.—Since 1900, the policy of waterway improvement and extension has been gaining support. This has been a part of the movement for the wiser conservation and more economic use of all natural resources. The traffic congestion on the railroads at many points during 1906 and 1907, and the increasing costs and rates of transportation have also caused added attention to be given to the use of waterways. The large development and use of waterways in Germany, Holland, Belgium and France, and the attention being given to canals in other countries have influenced public opinion in the United States. The construction of the Panama Canal (*see*), with an expected revolution in transcontinental business, calls public attention to water routes. The real explanation for the revived interest in inland waterways is, however, to be sought in the rapid increase and diversification of industry. Several sections of the United States have reached a stage of industrial development and have attained a density of population that require the economy and efficiency in transportation facilities that can be secured only by making full and efficient use of the means of transportation both railroads and waterways.

See CANAL ZONE; COASTING TRADE; DOCKS AND WHARVES; ERIE CANAL; INLAND WATERWAYS COMMISSION; IRRIGATION AND IRRIGATED LANDS; LAKES-TO-THE-GULF WATERWAYS; LAKES, JURISDICTION AND NAVIGATION OF; MISSISSIPPI AND MISSOURI RIVER COMMISSIONS; NATIONAL WATERWAYS COMMISSION; PANAMA CANAL; REAL ESTATE, PUBLIC OWNERSHIP OF; RIVER AND HARBOR BILLS; RIVERS, JURISDICTION AND NAVIGATION OF; SUEZ CANAL; WATERWAYS, NATURAL, REGULATION OF.

References: Commissioner of Corporations, *Report on Transportation by Water in the United States* (1909), Part I; Inland Waterways Commission, *Preliminary Report* (1908); United States Census Bureau, *Report on Transportation by Water, 1906* (1908); E. R. Johnson, *Inland Waterways, Their Relation to Transportation* (1893), *Ocean and Inland Water Transportation* (1906); C. P. McClelland and C. C. Huntington, *Hist. of the Ohio Canals* (1905); W. B. Parsons, "Cape Cod Canal" in Am. Acad. of Pol. and Soc. Science, *Annals*, XXI (1908), 81–91; G. D. Luetscher, "Atlantic Coastwise Canals," *ibid*, 92–101; C. Lloyd-Jones, "Anthracite-Tidewater Canals," *ibid*, 102–117; J. A. Fairlie," New York Canals," *ibid*, 117–125; J. B. McMaster, *Hist. of the U. S.* (1900–1910 *passim*), II, 74–77, III, 471–480, IV, 410–426, V, 132–138, VI, 86–89, 528–532; J. C. Mills, *Our Inland Seas* (1910); W. F. Johnson, *Four Centuries of the Panama Canal* (1906), ch. viii–xii; bibliography in A. B. Hart, *Manual* (1908), § 223; E. E. Sparks, *National Development* (1907); A. B. Hart, *National Ideals* (1907), ch. xvi; *Am. Year Book, 1910*, 552, and year by year.

EMORY R. JOHNSON.

CANDIDATE. A candidate is one who seeks office or honor. Candidacy usually implies the coöperation or at least the consent of the person named for the office, although one may be made a candidate against his will. In the United States, with its organized parties, two distinct classes of candidates appear: those for party nomination and those for office. The former are rivals within the party for selection either by the party nominating convention (*see*) or by the primary election (*see* PRIMARY, DIRECT). The successful candidate for party nomination has already attained the office which he sought, that of party nominee. He has the honor of representing his party at an election for public office. An independent or a non-partizan candidate for election is in a different position. He is simply a candidate for office and is not already through nomination the holder of a party office.

The nominated party candidates hold a leading place in party organization. The candidate for the presidency is in a sense the head of his party for the ensuing four years. He names the chairman of the national committee, and his wishes are expected to govern its action. Occasionally his real influence in the party becomes unmistakably evident. Two years after his nomination, President Taft held back the campaign textbook about to be issued by the congressional committee and dictated radical changes in it. This he did, not as President of the United States, but as the chosen leader of his party. Mr. Bryan, as a defeated candidate, has maintained a similar position of leadership in the Democratic party. In 1900 he dictated one resolution in the platform of the party against the wishes of a majority of the convention. This he could do because he had been the official candidate of his party for the past four years and was the already accepted candidate for renomination. Both candidate and platform proceed from the national convention, the supreme party authority. It is a moot question whether the platform should control the candidate or the candidate the platform. The connection between the two is very close. The candidate's letter of acceptance constitutes an important commentary on the platform; some times it contains material additions to it. In 1864 the candidate of the Democratic convention distinctly repudiated a portion of the platform. In 1904 the candidate notified the Democratic convention by telegram that he could accept the nomination only upon the distinct understanding that he favored the gold standard of values.

The relation of the party nominee to state and local party organization is much more complicated than that to the national party. Party leadership is divided between governors, senators, representatives and mayors of large cities. No two states are alike and primary election laws are making important changes, yet in every state the candidates receiving the regular party nominations hold an important place in the party.

It should be said that there may be, and frequently are, differences between the qualities that are demanded in a candidate and those that are needed for the proper conduct of the office. Mr. Bryce says that on one occasion a person mentioned as a candidate for the presidency said frankly to his friends that he would make a good President, but a poor candidate. "It is related," says Mr. Woodburn, "that when it was proposed in a certain county to make a man deputy auditor, objection was made that he was not competent to be deputy auditor; he was not even competent to be auditor. The candidate for auditor must be a man who is popular with the voters and who is willing and able to spend enough money to be elected."

See ASSESSMENTS FOR PARTY PURPOSES; CAMPAIGNS, POLITICAL; CONVENTION, POLITICAL; NOMINATION OF PRESIDENT; NOMINATING SYSTEMS; PRIMARY, DIRECT.

References: J. A. Woodburn, *Pol. Parties and Party Problems* (1903), 192, 204; M. Ostrogorski, *Democracy and Organization of Pol. Parties* (1902), II, 7–34; A. B. Hart, *Actual Government* (1903), 92, 93; C. E. Merriam, *Primary Elections* (1908).

JESSE MACY.

CANNON, JOSEPH GURNEY. Joseph G. Cannon (1839–) was born at Guilford, N. C., May 7, 1836. In 1858 he was admitted to the bar in Illinois, and from 1861 to 1868 was state's attorney for Vermilion County. In 1873 he was elected to Congress as a Republican, and served continuously, save for 1891–93, until 1913. As chairman of the committee on appropriations, 1895–1903, he vigorously resisted many demands for increased expenditures, while yielding in general to the financial demands of his party. From 1903 to 1911 he was Speaker, holding the office for a longer period than any of his predecessors. The virtual control of legislation which the rules of the House placed in his hands was often exercised arbitrarily, and he was a conspicuous leader among the reactionary element of the Republicans. There was strong opposition to his election as Speaker in 1909, and in March, 1910, after a bitter attack by Democrats and insurgent Republicans on "Cannonism," (*see*) the committee on rules was reorganized and the Speaker ceased to be a member. A motion to oust him by declaring the chair vacant was, however, lost. See COMMITTEES, PARTY; CANNONISM; INSURGENTS IN CONGRESS; SPEAKER OF THE HOUSE. **References:** E. G. Lowry, "Downfall of Cannonism" in *Harper's Weekly*, LIV (1910), 8; "As to Speaker Cannon" in *Rev. of Revs.*, XLI (1910), 140–142.

W. MACD.

CANNONISM. A term applied to the system of speakership domination, the power of the Speaker to control the activities of the House of Representation, which reached its highest development under the speakership of Joseph Cannon. See RULES OF CONGRESS; SPEAKER. **Reference:** H. B. Fuller, *Speakers of the House* (1909), ch. ix. O. C. H.

CANVASS, PRELIMINARY. See PRELIMINARY CANVASS.

CANVASS OF VOTES. See VOTES, CANVASS OF.

CAPITAL AND CAPITALIZATION. In English classical economics, the term capital signifies the products of industry, such as machines and materials, employed in the further production of wealth. Capital is contrasted with land and other natural agents employed in production, and with the products of industry held for use or enjoyment (consumption goods). This conception of capital was, until recently, generally employed by English and American economists, and by many economists in continental Europe. According to this view, amount of capital is determined by its cost of production.

In the language of business, capital signifies all wealth employed by its owner for the purpose of securing an income in money, or in benefits measurable in money. Capital, in this sense, includes natural agents of production, and also intangible income sources, such as patent rights, franchises, good will. Its amount is ascertained by computation from the income it yields (interest). In recent economic theory, this conception of capital shows a tendency to displace the classical conception. Some theorists, notably Irving Fisher, employ an even broader concept, namely, the aggregate of wealth existing at a given time.

Corporate Capital, and Capitalization.—The actual, or economic capital of a corporation, is measured by the value of the property which it possesses, less the amount of its debts. The term capital is, however, more frequently applied to the original fund of wealth with which the corporation begins business (paid in capital). It is also applied to the aggregate face value of the shares of capital outstanding; and sometimes to the sum of the outstanding shares and the funded debt. The aggregate of shares of stock and bonds is more commonly designated as the capitalization of the corporation. There may at first, be no discrepancy

between the economic capital of a corporation, the paid in capital, and the capitalization. In the course of time discrepancies naturally arise, in consequence of the business success or failure of the corporation. If its assets increase in value, this increase is usually carried on the books of the corporation, not as "capital," but as surplus or "undivided profits." A decrease in value of assets may simply appear as "loss," with no revision of the item "capital."

Frequently, even at the beginning of its business, there is a wide discrepancy between the actual capital of a corporation and its capitalization. The stock may be issued above or below par; it may be given as a bonus with bonds subscribed. When stock is issued for property or services, these may be overvalued or undervalued. Excess of capitalization over actual capital constitutes overcapitalization. Excess of actual capital over nominal capital is undercapitalization. The market price of shares furnishes a practical indication of the state of capitalization of a company. The capital of a corporation may be arbitrarily increased through the *pro rata* distribution among its shareholders of new shares at a nominal price, or even gratuitously. This practice is known as stock-watering (*see*), a term sometimes applied also to overcapitalization, especially when resulting from reorganization or consolidation of corporations. In such cases it is a common practice to exchange two or more shares in the reorganized or consolidated company for each share in the original company or companies. The watering of stock does not necessarily result in overcapitalization. If the value of a corporation's assets exceeds the aggregate par value of its shares, an increase in nominal capital merely corrects a former undercapitalization. The stock of many of the American "trusts" (*see*) has been repeatedly watered, without resulting in overcapitalization.

Regulation.—By constitutional or statute law, most of the American commonwealths prohibit the issue of capital stock except in exchange for money, property or labor. Expressly, or by implication, provision is made that such property or labor shall be rated at a reasonable valuation. Banking corporations, under both federal and state laws, are held strictly to requirements insuring a paid in capital equal to capitalization. The provisions respecting ordinary mercantile, industrial and mining corporations are rendered practically nugatory by the difficulty of ascertaining the true value of property accepted in exchange for shares. In the absence of evidence of fraud, the valuations made by the directors of the corporation are regarded as final in the eyes of the law.

Overcapitalization and stock-watering in the field of competitive industry and commerce have little public significance, except in so far as they are employed to deceive investors, or to defraud minority interests. In the fields of public utilities and of monopolized industry their significance is great. It is generally believed that pubilc utility corporations should be limited to merely a reasonable return on capital invested (measured in terms of cost). Abnormally high profits are regarded as evidence that prices or charges are excessive. If such corporations are allowed to inflate their capitalization, the abnormal profits are concealed, and the work of regulation of charges is rendered difficult. Similarly, monopolistic industrial corporations, through inflation of capital, reduce dividends to a level that conceals the fact that excessive profits are earned on actual investment. In Massachusetts, the watering of capital of public utilities corporations (*see* PUBLIC SERVICE CORPORATIONS) is effectively restrained by law. Shares of stock in such corporations may not be issued below par. Shares may be issued only upon the authorization of a state commission, which determines the amount that may be issued after investigation of the purpose for which it is proposed to issue the shares. Thus the acquisition of property at an inflated valuation is rendered impracticable. In New York and Wisconsin the capitalization of public utilities companies is subjected to similar commission control. The tendency toward control of capitalization appears in the recent legislation of other states (*e. g.*, Iowa, Corporations Act of 1907). The appointment in 1910 of the Railway Capitalization Commission foreshadows a similar tendency toward regulation in federal legislation.

See CORPORATION CHARTERS; RAILROAD CAPITALIZATION; RAILROAD COMMISSIONS; RAILROADS, VALUATION OF; STOCKHOLDERS; STOCK ISSUES; STOCK WATERING; TRANSPORTATION, PROBLEMS OF.

References: A. Marshall, *Principles of Economics* (3d ed., 1895), Bk. II, ch. iv; J. B. Clark, *Distribution of Wealth* (1899), chs. ix, x; Böhm-Bawerk, *Capital and Interest* (1890); I. Fisher, *Capital and Income* (1906).

ALVIN JOHNSON.

CAPITAL PUNISHMENT. In former times the death penalty was widely used for many kinds of offenses; its application, even when it is legal, has gradually diminished in civilized countries. The reasons for this disuse are: (1) A higher regard for human personality gives a greater sacredness to life. Wanton waste of blood belongs to low stages of culture. (2) The death penalty, even for murder, is a serious obstruction to justice; because juries, where evidence is not overwhelming, prefer to pronounce a man innocent, rather than take the responsibility of his death. They would be willing to send him to prison for life. They fear that the man may, possibly, be innocent. (3) The death penalty is irreparable.

Many cases can be cited where the innocence of the accused has been proved either before or after the hour set for execution. All other penalties can, in some measure, be corrected or indemnified; the death penalty is final. (4) Executions create criminal impulses in the general population or intensify brutal and savage passions, by social imitation and contagion. This was specially true when executions were public; through newspapers, with illustrations, all executions are now public, and public on a vaster scale than was possible when the spectacle was visible only the crowd surrounding the scaffold.

The arguments for both sides, drawn from statistics, leave the solution in doubt. The figures are often contradictory, as presented, and the causes of increase or decrease of crime are numerous and complex; the penalty is only one of these causes, often not the most important. In general, violent crimes have diminished as the death penalty has been abolished by law or by executive clemency; but this does not prove that the abolition of capital punishment caused the decrease in crimes of violence. The improvement in general intelligence and morality, due to education and religion, are the chief causes of the greater respect for life. The watchfulness of well organized police, the better lighting of cities, the progress of industries and many other factors may be cited. Practically the death penalty has come to have little significance. **See** CRIME, STATISTICS OF; LAW, CRIMINAL, PRINCIPLES OF. **References:** Paul Cuche, *Traité de science et de législation penitentiares* (1905), 481; A. Prins, *Science pénale et Droit Positif* (1899), 406; S. R. D. K. Olivecrona, *De la peine de mort* (1868); E. Ferri, *Sociologia Criminale* (4th ed., 1896), 895; VIIIme Congrès pénitentiare international, *Actes* (1910).

CHARLES RICHMOND HENDERSON.

CAPITAL OF THE UNITED STATES. The seat of government of the United States has been shifted several times. Before the Constitution made provision for a capital, Philadelphia, Baltimore, Lancaster, York, Princeton, Annapolis, Trenton and New York were meeting places of Congress. In 1783 a site was selected near the falls of the Delaware, but the plan was not carried out.

In the Federal Constitution power was given to Congress. "To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states and the acceptance of Congress, become the seat of the government of the United States" (Art. I, Sec. viii, ¶ 17). By an act of December 23, 1788, Maryland offered such a district. Virginia, December 3, 1789, ceded a tract "as will be most central and convenient," on the "banks of the river Patowmack, above tide water, in a country rich and fertile in soil, healthy and salubriuous in climate."

Congress accepted a tract of land, part from Maryland and part from Virginia, by act of July 16, 1790. The capital was moved from New York to Philadelphia, where it was to remain ten years. From there it was duly transferred to Washington in the new District of Columbia, in 1800. In July 1846, the tract given by Virginia was retroceded to that state.

The city was laid out by Major L'Enfant, a French engineer.

The government was at first as under Maryland and Virginia. In 1802, Washington became a municipality, with a mayor appointed by the President, and a council elected. The mayor was later appointed by the council, and still later elected. In 1871, the government was changed to the territorial form. In 1874 it became a government under the commission plan. The inhabitants have neither votes in any election, nor delegates in Congress. Congress pays half the cost of carrying on city affairs and the taxpayers of the District pay the other half.

See DISTRICT OF COLUMBIA; PUBLIC BUILDINGS, FEDERAL, STATE AND MUNICIPAL; WASHINGTON, D. C.

References: House Reports, 58 Cong., 2 Sess., No. 646 (1904); A. B. Hart, *Actual Government* (1908), § 153; W. F. Willoughby, *Territories and Dependencies* (1905), ch. x; J. B. Varnum, *Seat of Government* (1854).

T. N. HOOVER.

CAPITALS OF STATES. State capitals are always provided for in the state constitutions, a usual provision being that the capital shall remain at a specified place for a certain number of years. Changes of capitals may be made simply by statute, as allowed in some states or by referendum, as is generally provided.

Several principles are involved in the selection of state capitals. The geographical center is usually the principal element, as in Columbus, Ohio; Indianapolis, Indiana; Springfield, Illinois; Nashville, Tennessee; Des Moines, Iowa; Little Rock, Arkansas, and others. Some state capitals are located on the principle of avoiding large cities, as is Annapolis, Maryland; Frankfort, Kentucky; and Olympia, Washington. Some have formed the nucleus of a later populous city like Indianapolis (233–650), Columbus (181,511), Atlanta (154,839), and Denver (213,381). Some of the more recent states have carried to extremes a sort of division of the spoils, a plan of distributing the various state institutions about in such a way that no two will be in the same city or county. North Dakota's constitution compels the following distribution of state institutions; state capital at Bismark; state university at Grand Forks; agricultural college at Fargo; state

POPULATION OF STATE CAPITALS

State	Capital	Population 1900	Population 1910
Alabama	Montgomery	30,346	38,136
Arizona	Phoenix	5,544	11,134
Arkansas	Little Rock	38,307	45,941
California	Sacramento	29,282	44,696
Colorado	Denver	133,859	213,381
Connecticut	Hartford	79,850	98,915
Delaware	Dover	3,329	3,720
Florida	Tallahassee	2,981	5,018
Georgia	Atlanta	89,872	154,839
Idaho	Boise	5,957	17,358
Illinois	Springfield	34,159	51,678
Indiana	Indianapolis	169,164	233,650
Iowa	Des Moines	62,139	86,368
Kansas	Topeka	33,608	43,684
Kentucky	Frankfort	9,487	10,465
Louisiana	Baton Rouge	11,269	14,897
Maine	Augusta	11,683	13,211
Maryland	Annapolis	8,525	8,609
Massachusetts	Boston	560,892	670,585
Michigan	Lansing	16,485	31,229
Minnesota	St. Paul	175,597	214,744
Mississippi	Jackson	7,816	21,262
Missouri	Jefferson City	9,664	11,850
Montana	Helena	10,770	12,515
Nebraska	Lincoln	40,169	43,973
Nevada	Carson City	2,100	2,466
New Hampshire	Concord	19,632	21,497
New Jersey	Trenton	73,307	96,815
New Mexico	Santa Fé	5,603	5,072
New York	Albany	94,151	100,253
North Carolina	Raleigh	13,643	19,218
North Dakota	Bismarck	3,319	5,443
Ohio	Columbus	125,560	181,511
Oklahoma	Oklahoma City	10,037	64,205
Oregon	Salem	4,258	14,094
Pennsylvania	Harrisburg	50,167	64,186
Rhode Island	Providence	175,597	224,326
South Carolina	Columbia	21,108	26,319
South Dakota	Pierre	2,306	3,656
Tennessee	Nashville	80,865	110,364
Texas	Austin	22,258	29,860
Utah	Salt Lake City	53,531	92,777
Vermont	Montpelier	6,266	7,856
Virginia	Richmond	85,050	127,628
Washington	Olympia	3,863	6,996
West Virginia	Charleston	11,099	22,996
Wisconsin	Madison	19,164	25,531
Wyoming	Cheyenne	14,087	11,320

normal schools at Valley City and Mayville; deaf and dumb asylum at Devil's Lake; reform school at Mandan; insane asylum at Jamestown; soldier's home at Lisbon; blind asylum in Pembina County; industrial school at Ellendale; scientific school at Wahpeton. Concentration of some of these interests would lead to better and less expensive administration.

The capitol is usually a very good piece of architecture, but in many states outgrown, so that numerous offices are in private buildings, thus causing a large annual expenditure for rent. In the capitol building may be placed relic rooms, flag rooms, libraries, both departmental and circulating. Portraits of governors usually adorn the walls, and paintings of important events in the state's history are to be seen. Statuary of the state's best known sons is in evidence. Some buildings are better known because of the cost of the furnishings such as the Pennsylvania capitol.

The locations of state capitols have been changed rather frequently. California has had Pueblo de San Jose and Sacramento; Connecticut, New Haven and Hartford; Ohio, Chillicothe and Columbus; Georgia, Milledgeville and Atlanta; Iowa, Iowa City and Des Moines; Kentucky, Lexington and Frankfort; Louisiana, New Orleans and Baton Rouge; Nebraska, Omaha and Lincoln; New York, New York and Albany; Pennsylvania, Philadelphia and Harrisburg; Rhode Island has had several, among them being Newport, Warwick, and Providence; West Virginia, Wheeling and Charleston.

See Public Buildings, Federal, State and Municipal.

References: A. B. Hart, *Actual Government* (1908), 130; F. N. Thorpe, *Federal and State Constitutions* (1909). Thomas N. Hoover.

CAPITULATIONS, TURKISH. Since the conquest of Constantinople by the Turks in 1453 the sultans have at various times, by decrees, granted large privileges to European residents in the Ottoman Empire. These decrees were called "capitulations" because they were divided into chapters. At an earlier date the Moslem states in the Levant had granted to settlements of Italian merchants the privilege of administering their local affairs, because owing to difference in customs and laws this was the easiest method by which these settlements could be administered in a satisfactory manner.

The capitulation now generally cited as authority is that of 1540 in favor of the Franks. It gave them the liberty to travel, and to trade according to their own laws and usages. It conceded freedom from all duties save customs duties, liberty of workship, and the extraterritorial jurisdiction of ministers and consuls. Other western powers obtained the same privileges, England in 1583, the Netherlands in 1609, Austria in 1615.

In 1673 France, and, soon after, England, obtained the power of protecting the subjects of states having no capitulations. Then they sold the right of enjoying this protection to Greeks and Armenians who could afford to pay for the exemptions they secured. Ministers are said to have got rich by the sales. Later, Russia and Austria abused the privilege for political ends. Finally, they got many thousands of Turkish subjects under their care, especially in the provinces of Moldavia and Wallachia.

In 1869, therefore, the Sultan made a decree, forbidding foreign naturalization of his subjects without his consent. All the numerous treaties granting to foreign powers extraterritorial jurisdiction were based on the capitulations. Since the Turkish revolution of 1907 the government has tried to get rid of the obligations of the capitulations, and the foreign powers are gradually yielding the point of extraterritorial jurisdiction. When the Ottoman judicial system is reformed probably the government will secure release from many if not all of the embarrassments which it suffers from the capitulations.

See Extraterritoriality; Near East.

References: J. B. Moore, *Digest of International Law* (1906), II, §§ 283–286, 870; J. B. Angell, "Turkish Capitulations" in *American Historical Review*, VI (1901), 254–259.

JAMES B. ANGELL.

CAPTAIN OF ELECTION DISTRICT. In the political hierarchy which culminates in the state and national committees (*see* COMMITTEES, PARTY) this party official holds the lowest rank; but as the election district is the point of most immediate contact between the party and the voters, a great deal depends upon his character and efficiency. His first qualification is a knowledge of men, especially of their weak points, and a capacity to make friends easily. He must be energetic and willing to work, not at election time only, but always. He must also have some understanding of the legal machinery connected with registration and voting, because he has to supervise, in a measure, the work of the local election officials whose nomination he often has a voice in making. Unswerving loyalty is required of him. His function is to strengthen the hands of the assembly district leader to whom he usually owes his place. He is expected to preserve harmony in his district, suppress factions at the primaries and secure endorsement for the orthodox candidates. His success in these matters and in getting out the voters on registration and election days is of great consequence to his leader, whose share in the party funds and patronage depends upon the degree of harmony which he is able to enforce and the general vigor of his rule.

The captain, therefore, must be in constant and close touch with the voters, extending a helping hand to the unfortunate, securing work for the unemployed, distributing such favors as may be within his gift through political influence, or even forcing the recalcitrant into line by subjecting them to petty annoyances and persecutions. Immediate attention must be given to new arrivals in the district; and as they reach voting age, the young men must be seized upon and enrolled in the party. By way of reward he is given a voice in the councils of the assembly district, allowed to make nominations to minor offices, and entrusted with the spending of whatever money may come from the county committee for distribution during the campaign. The captain wields a good deal of power in his small district. His services to the party may bring him to public office; and his work provides the best preliminary training which a politician can have.

See BOSS AND BOSS SYSTEM; MACHINE, POLITICAL; ORGANIZATION; TAMMANY.

References: C. A. Beard, *Am. Government and Politics* (1910), ch. xxx; M. Ostrogorski, *Democracy and the Party System* (1910), ch. xi.

CHARLES A. BEARD.

CARLISLE, JOHN GRIFFIN. John G. Carlisle (1835–1910) was born in Campbell (now Kenton) County, Ky., September 5, 1835. From 1859 to 1861 he was a member of the Kentucky house of representatives, and of the senate from 1866 to 1871. In 1868 he was a delegate to the Democratic National Convention at New York. He was lieutenant-governor of Kentucky from 1871 to 1875, and in 1876 was an alternate presidential elector. The next year he was elected to Congress, retaining his seat in the House until 1889. From 1883 to 1889 he was Speaker, and in the Democratic National Convention of 1884 received 27 votes for President. In 1890 he was chosen Senator. His ability as a debater and parliamentarian, together with his championship of tariff reduction, made him one of the most prominent leaders of his party in Congress. In the silver controversy he sided with the "gold standard," or National Democrats. In 1893 he became Secretary of the Treasury under Cleveland. At the close of the administration he retired from politics, and practiced law in New York until his death there, July 31, 1910. **See** SPEAKER OF THE HOUSE OF REPRESENTATIVES; TREASURY DEPARTMENT. **References:** E. E. Sparks, *National Development* (1907); D. R. Dewey, *National Problems* (1907); M. P. Follett, *Speaker of the House* (1896).

W. MACD.

CARNEGIE, ANDREW. Andrew Carnegie (1837–) was born at Dumfermline, Fifeshire, Scotland, November 25, 1837. He came to the United States in 1848 and settled at Pittsburg, where he became a telegrapher in the employ of the Pennsylvania Railroad, and in 1860 superintendent of the Pittsburg division. During the Civil War he was superintendent of military railways and telegraph lines in the East. He then engaged in the iron and steel business at Pittsburg and elsewhere, introducing into this country in 1868 the Bessemer process. In 1899 the numerous establishments which by that time had passed under his control were consolidated as the Carnegie Steel Company, which in 1901 was merged in the United States Steel Corporation. He then retired from business. His vast and unparalleled benefactions, amounting up to 1912 to perhaps $200,000,000, include numerous gifts to libraries and educational institutions; $1,750,000 for a Peace Palace at The Hague; $750,000 for a building for the Bureau of American Republics at Washington; in 1910, $10,000,000 for the furtherance of universal peace. His writings include *Triumphant Democracy* (1886), *The Gospel of Wealth* (1900), *The Empire of Business* (1902), *The Life of James Watt* (1906), and *Problems of Today* (1909). See LIBRARIES, PUBLIC; MANUFACTURING, RELATION OF THE STATE TO. **Reference:** B. Alderson, *Andrew Carnegie* (1912).

W. MACD.

CAROLINA COLONY. In 1663 King Charles II granted to eight Lords Proprietors the territory of 31–36 degrees—in 1665 enlarged to 29–36.5 degrees—under the name of Carolina. The northeastern part of this grant had already been slightly settled, perhaps as early as 1650; the southern portion was not permanently settled until about 1670. These two settlements were legally known as Carolina until about 1712, though each had a separate governor until 1691, and a separate legislature all of the time. In popular speech, they were early known as Albemarle (the northern settlement) and Ashley River, and early in the eighteenth century they came to be known in England and in the provinces as North Carolina and South Carolina. The source of government of the Carolina province was in the Lords Proprietors—in their grants from the king. The proprietors entrusted the management of their lands and the government of their colonists to governors. With the exception of the period 1691–1712, they appointed a governor over each settlement. He was materially assisted by a council, which, with the lower house, made up the general assembly. See COLONIAL GOVERNMENTS, PROPRIETARY; NORTH CAROLINA; SOUTH CAROLINA. References: F. L. Hawks, *Hist. of North Carolina, 1584–1729* (1857–8); C. L. Raper, *North Carolina* (1904), ch. i. C. L. R.

CAROLINE AFFAIR. During the insurrections in Canada in 1837 sympathetic demonstrations were made along the frontier of the United States. Appeals were made by the insurrectionists for aid from United States citizens, and some of these joined the insurrectionists. The *Caroline* was a small steamer used by these men, upon which the United States flag had been raised. While the *Caroline* was in American waters on the night of December 29, 1837, seventy or more armed men boarded the vessel, killed some, wounded others, set the steamer afire and allowed her to drift over Niagara Falls. The United States immediately protested to Great Britain against this invasion of American territory in the time of peace. Great Britain expressed the opinion that the action was justified on the ground of necessity for self defence and assured the United States that no disrespect to the sovereign authority of the United States was intended. Mr. Webster, then, in 1842, stated that, accordingly, the topic would be "of no further discussion between the two governments." See BRITISH NORTH AMERICA, DIPLOMATIC RELATIONS WITH; MCLEOD CASE; WAR, INTERNATIONAL RELATIONS. References: W. E. Hall, *Int. Law* (1909), 215n, 265, 306; J. B. Moore, *Digest of Int. Law* (1906), II, 409. G. G. W.

CARPETBAGGER. A term first used in the early history of the western states with reference to "wildcat bankers" who had no fixed residence and could not be located when wanted. In its political significance the term was opprobriously appiled, in the reconstruction days in the South, to northern adventures who, by means of the freedmen's votes, seized the government of the southern states. By extension the term was often applied to any unpopular northerner living in the south. See RECONSTRUCTION; WILDCAT BANKS.

O. C. H.

CARTEL. An agreement between belligerents regulating intercourse in time of war. It may relate to the exchange of prisoners, customs, communication, etc. See PRISONERS OF WAR. G. G. W.

CASES, SIGNIFICANCE OF, IN CONSTITUTIONAL LAW. Cases and Controversies.—Technically speaking, cases have the same significance in United States constitutional law that they have in the other departments of the law. A "case" in the eye of the law is an action or suit brought before a court of justice to determine specifically the respective rights of parties litigant with reference to a matter in dispute. The second section of Article III of the Constitution, which enumerates the various suits or actions of which the federal courts may take cognizance, uses in some of its grants the word "cases" and in others the term "controversies:" thus it is declared that the judicial power shall extend to all *cases* in law or equity arising under the Constitution, and to *controversies* between two or more states or between citizens of different states. Whether there was any intention to give different meanings to these two terms is doubtful. Some attempt has, however, at times been made to distinguish between them. Thus it has been said that a single case may contain separable controversies. Again, it has been argued that controversies include only suits of a civil nature. In still another sense, the term "controversies" has been held to be broader in meaning than "cases," and to include disputes between parties which cannot be stated and determined in the form of what is technically known as a case. In general, however, the two terms are held to be synonymous.

Litigated Cases.—The important point is that the jurisdiction of the federal courts extends to the settlement of questions arising under the Constitution or laws and treaties of the United States only when they are presented in such a form that the judicial power is able to act upon them, namely, as involved in disputes between adverse parties with reference to matters of substantial interest. Thus the courts will not express an opinion as to the constitutionality of a measure until a case has been submitted to them for adjudication in which some application of this provision is

necessarily required. Nor, will they take jurisdiction of a suit involving solely the moot question as to the constitutionality of a law. Thus, in the case of Muskrat *vs.* U. S. (219 *U. S.* 346, 31 *S. C.* 250, January 23, 1911) the Supreme Court denied the power of Congress to require them to decide upon appeal certain cases which, by legislative act, it had declared might be instituted to determine the validity of certain earlier laws. This attempt to obtain a judicial declaration of the validity of the act of Congress," the court declared, "is not presented in a 'case' or 'controversy' to which, under the Constitution of the United States, the judicial power alone extends. . . . The whole purpose of the law is to determine the constitutional validity of this class of legislation in a suit not arising between parties concerning a property right necessarily involved in the decision in question."

Precedents.—When a case or controversy is decided, the principle necessarily applied by the court in reaching its conclusion, that is, to say its *ratio decidendi*, constitutes a precedent for future decisions, not only for the court rendering it but for all inferior courts of the same jurisdiction. And even for the courts of other jurisdictions it has a persuasive force. It is to be emphasized, however, that it is the principle necessarily involved in the decision which, by being applied, obtains this controlling or persuasive force. The language in which it may be stated by the court is not material. Indeed, as a formal proposition, it may not be stated at all, or, if stated, may be more broadly or more narrowly stated than the judgment which is rendered may require. Not infrequently the language of courts in their opinions is thus either inaccurate, or their statements irrelevant, and, to the extent of their inaccuracy or irrelevancy, the propositions stated are *obiter* and without precedential force. The rule accepted by English and American courts to recognize the validity of principles applied in earlier cases is not of absolutely obligatory force. From an unwillingness either to render the law uncertain, or to impute errors of judgment or reasoning to others or admit them as to themselves, the courts, in the great majority of cases, accept the doctrines of *stare decisis* (*see*), but when it is apparent that a principle has been inadvisedly or erroneously adopted they will depart from it, either explicitly overruling it, or, more often, so construing it as to deprive it of its undesired meaning. Whether or not the doctrine of precedents should be applied in the field of constitutional law with the same strictness that it receives in the field of private law is somewhat doubtful. In the latter the chief purpose of the rule is to protect, and render certain, private rights of individuals, and if a mischievous doctrine be declared by the courts it may easily be changed by a legislative enactment. But this may not be done in the case of a mischievous or erroneous interpretation of the Constitution. It would seem, therefore, that the courts should not be called upon, by a rigid adherence to precedents, to perpetuate an unwise doctrine, if the language of the Constitution will permit a different and preferable rule.

Influence.—In the above, reference has been had to the technical significance of constitutional cases in the United States. Turning now to their historical and political significance it is found that they have had, and in the future will undoubtedly continue to have an enormous importance. This results from the double fact that the courts have the final authority not only to determine the extent of the constitutional authority of the Federal Government and, reciprocally, that of the states but to construe the constitutional limitations resting upon these governments when operating within their several fields of legislative and executive control. Thus it is possible to enumerate a very considerable number of constitutional cases, the decisions in which were decisive of the general character of the governmental régime under which the American people were to live. The more important of these receive individual treatment in the CYCLOPEDIA OF AMERICAN GOVERNMENT. In a number of instances, also, cases have arisen and have been decided which have had a direct and important influence upon purely political questions of the day. As instances of the many that might be mentioned are Chisholm *vs.* Georgia (*see*), Dred Scott *vs.* Sandford (*see* Dred Scott Case), Worcester *vs.* Georgia (*see*), Briscoe *vs.* Kentucky (*see*), Marbury *vs.* Madison (*see*), and Texas *vs.* White, (*see*).

See COURTS, FEDERAL; REPORTS OF JUDICIAL CASES; STARE DECISIS.

References: T. M. Cooley and others, *Constitutional Hist. of the U. S. as seen in the Development of Its Law* (1890); W. W. Willoughby, *The Am. Constitutional System* (1904), ch. iii.

W. W. WILLOUGHBY.

CASS, LEWIS. Lewis Cass was born in Exeter, N. H., October 9, 1782. In 1799 or 1800 he settled in Marietta, Ohio. He studied law and in 1806 was elected to the state legislature. In 1812 he entered the army as colonel of volunteers, was in Michigan when Hull surrendered Detroit and was included in the capitulation. In 1813 he was appointed brigadier-general in the army and in October of that year he became governor of Michigan Territory. He served in this capacity till 1831, when he became Secretary of War in President Jackson's Cabinet. This position he gave up to become minister to France in 1836, but returned to America in 1842. Two years later he received 123 votes in the Democratic convention which nominated Polk. In 1845 he became Senator from Michigan. He was one of the first to put forth the doctrine of popular sov-

ereignty (*see*) in 1847. Nominated for the presidency in 1848, he was defeated by Taylor. He was Senator from Michigan from this time till he entered Buchanan's Cabinet as Secretary of State in 1857. He resigned in December, 1860, because he disapproved Buchanan's attitude toward the southern forts. He died in 1866. See DEMOCRATIC PARTY; MICHIGAN; SLAVE TRADE. References: A. C. McLaughlin, *Lewis Cass* (rev. ed., 1899); J. K. Polk, *Diary* (1910), III, 254, 462–466, 470–474.

A. C. McL.

CASUS BELLI. The technical term for the cause of a war. Wars rarely have a single cause and the ostensible cause is often not the real cause. See DECLARATION OF WAR; WAR, INTERNATIONAL RELATION OF. G. G. W.

CAUCUS, LEGISLATIVE, FOR LEGISLATION. Colonial.—The "Fundamental Orders" of Connecticut in 1639, provided: "It is ordered and decreed, that the deputyes thus chosen shall haue power and liberty to appoynt a tyme and a place of meeting togather before any Generall Courte to aduise and consult of all such things as may concerne the good of the publike." These words appear to legalize the caucus. As Connecticut was but an offshoot of Massachusetts, it is probable the caucus system was borrowed from the mother colony. So numerous were the caucuses of Boston, that the caucus has been thought to have originated there. At an early day the caucus occupied a prominent place in the Massachusetts legislature. "Do you keep the committee in play and I will go make a caucus against the evening and do you meet me," was the injunction of Samuel Adams to Mr. Warren of Plymouth, after holding a spirited interview urging resistance to Great Britain. So, too, in the other colonies, the caucus seems to have found a place in each of them; not as a part of their written constitution, as in Connecticut, but as a part of their extra-legal political machinery. Revolution, independence, and the organization of political parties, multiplied the activities of the caucus. In caucus the parties wrought out their legislative program and chose the officers of the assembly. The boss and ring system, common to the towns and cities, found its way into the legislative assemblies and with the aid of the caucus controlled legislation.

Congress.—After the National Government was organized, the caucus was set up in Congress. The Federalists held a caucus in 1794 to ascertain the public sentiment on the Whiskey Insurrection and in 1795 upon the Jay treaty. The Republicans caucused upon the Alien and Sedition Laws (*see*), the Kentucky and Virginia Resolutions (*see*), and decided on the first embargo (*see*) in caucus.

Jefferson, in a letter to Madison, February 26, 1799, has left an account of a caucus of the Federalist party, that will illustrate the workings of these early meetings:

> Yesterday witnessed a scandalous scene in the H. of R. It was the day for taking up the report of their committee against the Alien and Sedition laws. &c. They held a caucus and determined that not a word should be spoken on their side, in answer to anything which should be said on the other. Gallatin took up the Alien, and Nicholas the Sedition law; but after a little while of common silence, they began to enter into loud conversations, laugh, cough. &c., so that for the last hour of these gentlemen's speaking, they must have had the lungs of a vendue master to have been heard. Livingston, however, attempted to speak. But after a few sentences, the speaker called him to order, and told him what he was saying was not to the question. It was impossible to proceed.

The removal of the capitol from Philadelphia to Washington led to more frequent meetings of the parties in caucus, owing to the poor facilities in Washington, at that time, for members to meet and discuss their plans. A writer in the Philadelphia *Aurora* (Feb. 17, 1816) tells how the Republican caucus was managed:

> Gallatin developed a great machine. His plan was to have one or two members from each state with whom he held council. When the time was ripe a meeting of the representatives of that state was held and the leader presented Gallatin's plan. Later the whole would meet in caucus and find they all agreed—wonderful.

Since 1800, the caucus has occupied a prominent place in both the Senate and House of Representatives. It reigned supreme during the Civil War. It was weakest for a decade preceding and following the war. The case of Charles Sumner will show the caucus at work in shaping a legislative program. When Congress met in special session July 3, 1866, the Republicans held a caucus at which a resolution was adopted limiting the business of the session to removing obstructions to the reconstruction laws. Sumner attended the caucus, voted against the resolution, and after it had been adopted, declared he would not be bound by it. Fessenden reminded him, that in that case, he should not have voted, that attending and participating in a caucus obligated the individual to be bound by the will of the majority in caucus. In vain, did Sumner invoke his rights as a Senator; and later when he attempted to introduce into the Senate business outside the scope of the caucus resolutions, he was overruled after a sharp encounter with the leaders of the caucus on the Senate floor.

Since 1848 the Senate has chosen its committees in caucus. From 1790 to the elevation of Champ Clark to the speakership (1911), the committees of the House of Representatives have been appointed by the Speaker. During that period the Speaker was virtually chosen in caucus, and thus it might be said the caucus had its influence over appointments. With the reorganization of the House by the Democrats at the special session of 1911, the appointment of committees was lodged in the caucus. At present (1913), the caucus completely controls legislation in the

House. It determines the stand to be taken by the party on important legislation. In the words of a member of the special session of 1911, "There is, today, no legislation in the House of Representatives, save by the caucus of the Democratic party."

Reason.—If there is to be a party policy, there must be some organ for direction and for determination. The practical question is whether such determination and direction shall be in the hands of the body of the party in any legislature, or in hands of leaders largely uncontrolled by the expressed sentiment of the body. The dictation of the party caucus, which sometimes seems intolerable to the independent minded member, is necessary if there is to be party cohesion and responsibility and at the same time something like majority rule in the body of the party members.

See Committee System; Congress; Party Organization in Legislative Bodies; Rules; Speaker.

References: L. G. McConachie, *Congressional Committees* (1898); H. B. Fuller, *The Speakers of the House* (1903); M. Ostrogorski, *Democracy and the Party System* (1910), ch. xiii; M. P. Follett, *Speaker of the House of Representatives* (1896). H. A. McGill.

CAUCUS, LEGISLATIVE, FOR NOMINATION. Under this head fall the caucuses of the state legislatures and Congress. The former is commonly known as the legislative caucus, the latter as the congressional caucus. They were parts of the same system and arose upon the formation of the state governments following the overthrow of British rule, the adoption of the Federal Constitution, and the organization of political parties. They were similar in organization and methods of procedure. Each was controlled by a small coterie of political leaders, who, after working out the slate and securing a sufficient number of adherents to carry their program through private interviews and parlor caucuses, called the caucus to adopt the ticket and announce it to the public. There was usually no discussion, the vote was taken by ballot, and the candidate receiving a majority of the votes cast was declared the party nominee. He who went into the caucus must abide by the will of the majority. Central and local committees of correspondence were appointed to manage the campaign.

The State Caucus.—By 1880, the legislative caucus had become common to most of the states, except Rhode Island and New Jersey, where the convention took its place. It was used principally to nominate candidates for governor, the United States Senate, and the presidential electoral ticket. Occasionally, as in the case of New York in 1812, the legislative caucus nominated a candidate for the presidency, but generally the legislative caucus supported the congressional caucus nominee. The legislative caucus of Virginia was the main stay to the congressional caucus throughout its control of the presidency. Upon the fall of the congressional caucus in 1824, the legislative caucus fell heir to its powers, but lost them upon the establishment of the national convention. By 1832, the legislative caucus had been shorn of about all its powers, save the nomination of candidates for the United States Senate, which it still retains. "The caucus being the recognized usage of all parties from time immemorial," declared the chairman of the Democratic state committee in the senatorial election contest in New York in 1911, "there should be no question of its being the duty of all assemblymen and state senators elected upon the Democratic ticket to abide by its results and vote for the senatorial candidate of the overwhelming majority."

The Congressional Caucus.—The congressional caucus naturally divides into two periods: (1) the period of development, or mixed congressional caucuses, extending from 1788 to 1804; (2) the period of purely congressional caucuses or the reign of the caucus, 1804–1824. No congressional caucus was held during the first presidential election, but there was a manipulation of the votes of the electoral colleges, in the movement to curtail the vote for John Adams, that was similar in method and results to the workings of the congressional caucus of a later day. At the second presidential election, a meeting of a few interested politicians was held in Philadelphia, October 16, 1792, to choose a candidate of the Republicans for Vice-President, "the result of which was unanimously to exert every endeavor for Mr. Clinton and to drop all thoughts of Mr. Burr" (John Beckley to James Madison, Oct. 17, 1797). A similar meeting was held by the Republicans in Philadelphia, in June, 1796, at which time Jefferson and Burr were chosen as the Republican nominees for President and Vice-President. The meeting was attended by leading Republican politicians both in and out of Congress. This meeting has erroneously been taken as the first congressional caucus. Congress was not in session at the time and there was not such a general attendance of Democratic members of Congress as claimed by Oliver Wolcott in his letter to Henry W. Edwards. The Republicans held two caucuses in 1800. At the first, Jefferson was agreed upon for President. At the second, Burr was chosen as a running mate to Jefferson and the caucus agreed to support them equally. This resulted in Jefferson and Burr receiving the same number of votes, which led to the exciting contest in the House of Representatives, (*see* Twelfth Amendment).

The only congressional caucus ever held by the Federalists met May 11, 1800. Theodore Sedgwick in a letter to Rufus King, May 11, 1800 thus described it: "We have held a meeting of the whole Federal party on the

subject of the ensuing election and have agreed that we will support, *bona fide*, Mr. Adams and General Pinckney. If this agreement be faithfully executed we shall succeed, but otherwise we cannot escape the fangs of Jefferson." The agreement was not kept, and its nonfulfillment was largely responsible for the disruption of the Federalist party which followed soon after.

The first purely congressional caucus was held in the Senate chamber, February 25, 1804. Jefferson was nominated for President and Burr for Vice-President. From this time, to 1824, when the last congressional caucus was held, the Republicans regularly nominated their candidates (save in 1820) for President and Vice-President in caucuses composed of members of Congress only. Beginning with 1808, such of the proceedings as it was deemed wise to disclose were published in the *National Intelligencer* over the signature of the chairman and secretary of the meeting. Not until 1824, were the meetings thrown open to the public, who were allowed to watch the proceedings from the galleries. Territorial delegates were admitted in 1808 and thereafter. An attempt was made to vote by proxy in 1808, but failed. Proxies were allowed to vote in 1816 and 1824.

Objections to the caucus were made as early as 1804. Beginning with the campaign of 1808, and continuing to its overthrow in 1824, an unrelenting campaign was waged against the caucus. Its fall was due to the continued attacks upon it, the rise to importance of the West in national affairs, the increased facilities for communication, the growing intelligence of the people, and most of all by the dissolution of the Republican party, which had originated and fostered it.

See CONVENTION, POLITICAL; NOMINATING SYSTEMS; NOMINATION OF THE PRESIDENT; PRIMARY; PRIMARY, DIRECT.

References: Some of the statements in this article are made on the authority of unprinted sources. The best printed accounts are as follows: *King Caucus, or Secrets Worth Knowing* (1824); *Debate on the Fisher Anti-Caucus Resolutions in the House of Commons, North Carolina, Dec. 1823* (1824); M. Ostrogorski, *Democracy and the Organization of Political Parties* (1902), II, ch. i; C. S. Thompson, *Rise and Fall of the Congressional Caucus* (1902); C. L. Jones, *Readings in Parties and Elections* (1912), ch ii. H. A. MCGILL.

CAUCUS, LOCAL, FOR NOMINATIONS. See PRIMARY; PRIMARY, DIRECT.

CEDED DISTRICTS. See CESSIONS BY STATES TO THE FEDERAL GOVERNMENT; TERRITORIAL JURISDICTION OF U. S. WITHIN THE STATES.

CEMETERIES. A cemetery is land set aside for the burial of the dead. The right of eminent domain may be exercised, subject to the usual rules, to condemn lands for a cemetery; but cemetery lands may be taken for some other public use, unless specially protected by statute. The right of burial in a churchyard cemetery and public cemeteries, as distinguished from independent cemeteries owned by private corporations, is merely an easement and gives no title to the land and is legally revocable whenever public necessity requires. In independent cemeteries where individual users are lot owners they hold solely for purpose of burial, and whenever such use becomes offensive it must yield to the laws of suppression of nuisances; and no condition or covenant in deeds appropriating lands to cemetery uses will prevent the proper authority from declaring such use unlawful.

Hygienic and sanitary regulations in congested cities of Europe, and increasing cost of burial among the poor, have led to establishment of municipal public cemeteries in many places. Certain lot privileges for a limited period may be had free; family lots, superior locations or longer possession, for small charges.

See MONUMENTS, PUBLIC; REAL ESTATE, PUBLIC OWNERSHIP OF.

References: *Am. and Engl. Encyl. of Law* (1909-10), V; *Survey*, XXVI, 820.

S. McC. L.

CENSORSHIP. See FREEDOM OF SPEECH AND THE PRESS.

CENSUS

Decennial Enumeration.—The Constitution of the United States provides that "representatives and direct taxes shall be apportioned among the several states . . . according to their respective numbers" (Art. I, Sec. ii. ¶ 3); states how these numbers shall be ascertained, and adds that the enumeration shall be repeated "within every subsequent term of ten years, in such manner as they (the Congress) shall by law direct." Under this provision, the first federal census was taken in 1790. To the United States belongs the unique distinction of having inaugurated the decennial or periodical enumeration of population and resources. Earlier censuses had been taken in many countries; they are an ancient method of ascertaining military strength and material resources, the English Domesday Book of 1087 being the best known and most complete of the earlier investigations. The provision for

periodical recurrence as a basis for the measurement of national growth, originated with the authors of our Constitution. Most of the European countries have followed the example; England, Norway, and Sweden in 1801, Prussia in 1810, and France in 1831. France and Germany now take a five year census of population. The fourth Pan American Conference at Buenos Aires in 1910 approved a plan for a census of all the South and Central American states on a uniform date at decennial intervals.

Inquiries.—The first census act, signed by President Washington March 1, 1790, required the marshals of the several judicial districts, with the aid of assistants, to ascertain the number of inhabitants within their districts, omitting Indians not taxed, and distinguishing free persons (including those bound to service), the sex and color of free persons, and the number of free males 16 years of age and over—five questions in all. The last inquiry was designed to obtain definite knowledge of the military strength of the country. Thus, while the Constitution requires merely a bare enumeration, the first census act began the extension of the inquiries which has continued with each decennial census act, until practically every phase of industrial and sociological conditions is now included in the schedules. Inquiries regarding agriculture were added in 1820; manufactures in 1840; mining in 1880. The tenth census (1880) was designed by Francis A. Walker, the superintendent, to be a centennial inventory of the growth and resources of the nation. It filled twenty-two large quarto volumes. Inquiries on the population schedule have increased from five in 1790 to twenty-eight in 1900 and thirty in 1910.

Periods.—It took eighteen months to complete the enumeration of the first census. In recent censuses, one month is allowed for enumeration in rural districts, and two weeks in the cities. The American method of extending the period of enumeration over one month is known as the census *de jure*, as distinguished from the English, or *de facto* method, which begins and completes the enumeration in one day, after a previous distribution of blanks, to be filled out by the householders. The *de facto* census photographs the people exactly as they are on a given date, and reduces errors of duplication and omission to a minimum. It is impossible to employ it in a country like the United States, where many sections are thinly populated and difficult of access.

Officers.—The federal census was taken by the marshals until 1880, when a new body of census officials, known as supervisors, was created, one or more for each state. The supervisor divides his district into enumeration districts, usually containing about 2,500 inhabitants, and appoints an enumerator for each district. There were 330 supervisors in 1910, and the number of enumerators increased from 650 at the first census to 52,871 in 1900, to over 60,000 in 1910, exclusive of clerks, interpreters and special agents.

Cost.—The cost of the census has increased rapidly. That of 1790 cost $44,377, or 0.112 per capita; that of 1900 cost $11,854,617, or 0.1550 per capita; the 1910 census, when completed, will have cost about $14,000,000. The cost of the field work increased from $4,267,394 in 1900, to $5,855,500 in 1910, or more than 27 per cent, while the increase in population was but 21 per cent.

Mechanical Tabulation.—As the population has increased and the census inquiries multiplied, the difficulties of promptly tabulating the returns have increased correspondingly. Resort to crude mechanical methods of tabulation was had in 1880; in 1890 and 1900 electrical tabulating devices known as the Hollerith system were employed, and in 1910 electrical punching and tabulating machines invented for and owned by the government were used. By this method the facts appearing upon the schedules are transferred to cards, each item being represented by a punched hole, the significance of which is determined by its location on the card. These cards are run rapidly through electrical tabulating machines, which register the data by means of electrical contact, in a variety of combinations. Each of these combinations was formerly separately tallied by hand, involving an immense amount of labor now automatically performed and readily verified. Even with this mechanical aid, it is impossible to compete the tabulation of all the data appearing upon the population schedule in two years from the date of enumeration, within which period the law requires that it shall be published.

Permanent Office.—The establishment of the permanent Census Office in 1902 permits the compilation of these additional data during the years intervening between the compilation of one census and the organization of another. It also converts the bureau into a general statistical office, where many reports other than those of the census, are compiled. The same law provided for a quinquennial census of manufactures; and a five year census of agriculture has since been required. In time a five year census of population will probably follow, as in France and Germany. The need for a more frequent population census, for sociological purposes, is greater in the United States than in any other country, by reason of the rapid and remarkable changes in population brought about by increasing immigration from many foreign countries. The feeling exists that a part at least of the cost of an intermediate census should fall upon the several states.

State Censuses.—By constitutional or statutory requirement, 24 states are committed to an enumeration of their population midway between the federal decennial censuses; but in 1905 only 13 of these states took such a

census, *viz.*: Florida, Iowa, Kansas, Massachusetts, Michigan, Minnesota, New Jersey, New York, Oregon, Rhode Island, South Dakota, Utah, and Wisconsin, containing but 31.52 per cent of the total population. The census act of 1870 contained a provision whereby the Federal Government undertook the compilation of the returns of all states making such a midway enumeration on the federal blanks. Several states complied with the requirement and forwarded their schedules to Washington. There being then no permanent Census Office, these results were never tabulated, and the provision was subsequently repealed. That difficulty no longer exists, and the law might profitably be re-enacted.

See IMMIGRATION; POPULATION OF THE UNITED STATES; RACE ELEMENTS, FOREIGN; STATISTICS, OFFICIAL; STATISTICS VITAL.

References: C. D. Wright and W. C. Hunt, *Hist. of the U. S. Census* (1900), contains all the census acts, and copies of all the schedules used at each census; S. N. D. North, Director of Permanent Census, *Annual Reports* (1903–1909); W. F. Willcox and others, "The Federal Census, Critical Essays" in Am. Econ. Assoc., *New Series*, I (1899); W. B. Bailey, "Taking the Census" in *Independent*, LXVIII (1910), 804–807; E. D. Durand, "Changes in Census Methods for 1910" in *Am. Jour. of Sociology*, XV (1910), 619–632, "Taking Census of 1910" in *Rev. of Rev.*, XLI (1910), 589–596; J. H. Parmelee, "Statistical Work of Federal Gov." in *Yale Review*, XIX (1910), 289–308, 374–391.

S. N. D. NORTH.

CENTRAL AMERICA. This term to-day includes the republics of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, as well as British Honduras. The United States in commercial reports includes Panama under this classification. Historically this portion of America, discovered by Columbus in 1502 and subjugated by Alvarado in 1523, was the captain-generalcy of Guatemala under the viceroy of New Spain (Mexico). When independence (with Mexico) was declared (1821), these five states formed one republic, the constitution of the Central American Federation being declared in 1824. By 1847 this union was completely dissolved, and since then these five republics have been politically independent. In December 1907, a diplomatic agreement for mutual coöperation was signed. **Reference:** J. I. Rodriguez, *Am. Constitutions* (1905), I.

A. H.

CENTRAL AMERICAN COURT OF JUSTICE. In November, 1907, there met in Washington and held its sessions in the Pan American Union at that time known as the International Bureau of American Republics, a conference of the Central American republics, attended by delegates from Costa Rica, Guatemala, Honduras, Nicaragua and Salvador, with representatives also from the United States and Mexico. This conference established the Central American Court of Justice, to be located at Cartago, Costa Rica. A building for which Mr. Carnegie gave $100,000, was constructed, but was destroyed by a disastrous earthquake, May 4, 1910. Mr. Carnegie gave a like sum for a new building, to be erected in San Jose, Costa Rica.

The Central American Court of Justice is composed of one judge elected from each of the Central American republics, five in all, as above named. These judges are to sit a certain number of months in every year, and to their court are submitted all questions of an international character affecting the relations between these republics.

See CENTRAL AMERICA; PAN AMERICAN UNION.

References: Pan Am. Union, *Monthly Bulletin*, March, 1908, 1228; *Am. Jour. of Int. Law*, October, 1908, April 1909; *Dun's Review*, November, 1907; *Independent*, December 12, 1907.

JOHN BARRETT.

CENTRAL AMERICAN DIPLOMACY. In discussing the subject of the purposes of diplomacy in Central America, it is best to consider it under three heads, two of them historical: (1) efforts to preserve the independence of the originally declared republics and at the same time to escape absorption of territory by foreign powers; (2) efforts to agree to some sort of a working basis upon which a Central American federation could be established; (3) both of these are the foundation of contemporary diplomatic activity aimed at an arrangement by which all five republics may act in harmony on many of the modern problems of political economy.

Independence.—The provinces of Central America did not revolt from Spain when the superior government, Mexico, first attempted independence (1810). Their uprising took place later, in 1821, and immediately there appeared the distracting question whether the provinces should act together through a congress in Guatemala, become part of Iturbide's new Empire of Mexico, or hold aloof and prepare for territorial independence. Costa Rica, and the greater part of Salvador, as well as of Honduras and Nicaragua, fearing the tyranny of Mexico, refused to approve any act of incorporation. In one case (Salvador), diplomatic but futile overtures were made to the United States to assume protection of the country. Iturbide was soon overthrown, the exercise of force by Mexico was abandoned, and all Central America was invited to send delegates to a general congress for affiliation. This congress met in June, 1823, and its sessions lasted over a year; it made no effort to unite the other states with Mexico, but with the consent of that republic it declared the provinces formerly under the jurisdiction of

Guatemala to be independent states, confederated into a nation called the United Provinces of Central America.

Spain made practically no attempts to regain control of what had been lost. England, however, after obtaining possession of what later (1786) became known as British Honduras, threatened, in 1780, to capture a portion of Nicaragua covered by the basin of the San Juan River, and efforts in that direction were continued up to the signing of the Clayton-Bulwer treaty in 1850, the object of which was not only to arrange for the construction of an interoceanic canal but also to prevent Great Britain from asserting a protectorate over the Mosquito (*see*) coast. In the negotiations conducted to that end, Central America was diplomatically interested, and at times had to lean for support upon the United States. An episode of greater interest, however, appears in the struggle throughout all of Cetnral America to overcome by force and by diplomacy the invasion of the adventurer William Walker. The diplomatic negotiations, first to encourage the assistance of Walker, and then to induce the United States to take notice of his violation of neutrality laws, from 1855 until his death in 1860, brought the five republics of Central America into closer contact with each other and also with the United States (*see* FILIBUSTERS TO AID INSURRECTIONS).

Federation.—After the general revolution against Spain, in 1821, and the agreement in 1823 to become the *Provincias Unidas del Centro de America*, a federal constitution was modeled after that of the United States by the five states of Central America. For some time diplomacy seems to have been directed chiefly toward efforts to establish some sort of a working basis for the federation, which in 1825 was recognized by the United States, Great Britain and the Netherlands. In 1826 the Federation (Republic) of Central America sent a representative to Bolívar's congress in Panama. Salvador rebelled (1826), Nicaragua (1832), Guatemala, Salvador again, Honduras and Costa Rica (1833), and then the federation ended. In 1842 Salvador, Honduras and Nicaragua framed a joint constitution, and another in 1849, but with little success. Since that date, until 1907, this dream of unity, which is entertained by many of the serious native students of Central America, has seldom corresponded with the practical manifestation of their diplomacy.

Harmony.—On September 11, 1907, the diplomatic representatives of the five republics of Central America met in Washington, D. C., to take part in a Central American Peace Conference, its purpose being to find some basis of agreement between them by which their political, commercial and financial relations could be harmonized. This meeting was brought about through negotiations instigated by the United States; questions that could not be amicably settled by the conference were to be arbitrated by the Presidents of the United States and of Mexico. Formal sessions began on November 14, 1907, and were concluded on December 20, 1907. The principal results were the establishment in Guatemala City of a Central American International Bureau, which was to act, like the Pan American Union (*see*), for spreading in Central America commercial and other knowledge of the five republics; and the foundation, in Costa Rica, of a Central American Court of Justice, in which questions affecting the international relationships of the five republics could be arbitrated and decided by law. Problems touching on the intimate affairs of Central America as a whole, were fully discussed; final work on them, however, was to be left to a conference to be held annually in a selected republic of Central America. This conference has (1913) held meetings in Honduras, Salvador, Guatemalas, Nicaraugua and Costa Rica, discussed uniform currency legislation, a Central American agricultural school and pedagogical institute, a unified consular service, and promises to show the efficacy of modern diplomacy in uniting in a community of interest the five republics, even if an actual political union is not accomplished.

In three other instances the entrance of Central America into international intimacy and the recognition of the material advantages to be gained thereby, is shown in the as yet unfinished negotiations by Honduras, Nicaragua and Guatemala, for the adjustment of their respective loans by the good offices of the Department of State of the United States.

See CANAL DIPLOMACY; CENTRAL AMERICA; CENTRAL AMERICAN COURT OF JUSTICE; LATIN AMERICA; MEXICO, DIPLOMATIC RELATIONS WITH; NICARAUGUA; NICARAUGUA CANAL POLICY; PANAMA CANAL; PAN AMERICAN CONFERENCES; countries by name.

References: A. Fortier and J. R. Ficklin, in *Hist. of North Am.*, (1907), IX; H. H. Bancroft, *Central America* (1886); John Baily, *Central Am.* (1850); J. L. Stephens, *Travels in Central Am.* (1854); E. G. Squier, *Notes on Central Am.* (1855); J. H. Latané, *Diplomatic Relations of the U. S. with Latin Am.* (1900); J. W. Foster, *Century of Am. Diplomacy* (1900), *Practice of Diplomacy* (1906); Pan American Union, *Monthly Bulletin*, especially December, 1907. ALBERT HALE.

CENTRAL BANK. See BANK, CENTRAL.

CENTRALIZATION. Centralization as a principle of government implies that the power of the state in respect to a particular subject or subjects is vested in authorities located at a common center. For convenience of administration there may be established local organs or agencies throughout the state but they are without independent autonomy. They

are merely the creations of the central government and may be modified or displaced at its pleasure. The persons who constitute and administer these local organizations owe their appointment to the central government, they are subject to its direction and are responsible to it for the exercise of their powers. Centralization, however, does not necessarily mean concentration. The latter term is descriptive of a system under which the power of the state is vested in the same hands at a common center, while under a system of centralization it may in fact be distributed among several organs. Thus the administration of justice in France is centralized, but it is not concentrated in a single court at Paris.

The French writer Batbie classifies the forms of centralization under three heads: (1) political centralization; (2) administrative centralization; (3) economic and moral centralization. We have political centralization when a single supreme authority directs affairs throughout its territory by means of orders emanating from a central point; administrative centralization when, instead of leaving to existing local organizations the determination of their own affairs, the state substitutes local authorities of its own and controls their actions; and economic and moral centralization when the wealth and intellectual power of the state are drawn to the capital by the superior opportunities which it affords for the gratification of pleasure and the acquisition of economic gain. The more usual classification, however, is that of legislative and administrative centralization.

Under a system of legislative centralization, the legislative power of the state, so far as it relates to a particular subject or subjects, is vested in a single body whose jurisdiction is coextensive with the territory of the state. Usually, where the legislature of the state is centralized, the administration is likewise centralized, but this is not necessary. In the German Empire, for example, the enforcement of imperial legislation to a large extent devolves upon the authorities of the individual states (*see* GERMANY, FEDERAL ORGANIZATION OF). In short, the German system is largely one in which the principle of legislative centralization is combined with administrative decentralization. Centralization in fact is mainly a matter of degree. There are few, if any states in which centralization either of legislation or administration is followed in all matters of government. Even in France, decentralization, both in legislation and administration has been introduced to a considerable extent.

As compared with the principle of decentralization under which the power of the state is divided between a central organ and a number of local organizations possessing an independent autonomy of their own, the system of centralization has its advantages and disadvantages: unity of law and of administration, essential in respect to certain affairs, are secured; the power and strength of the state—necessary to meet crises are preserved: but on the other hand the right of local government is lost; the variety of interests and conditions which require different legislation are ignored; and by denying the people a share in the management of their local concerns the effect is to destroy rather than stimulate popular interest in public affairs. Centralization is well suited to states of small area having homogeneous populations and where there is little variety of conditions or difference of political conceptions, but in large states where the opposite conditions prevail it is less defensible.

See LOCAL SELF GOVERNMENT; STATE RIGHTS; STATES, CLASSIFICATION OF; STATE, THEORY OF.

References: P. Ashley, *Local and Central Government* (1906), 1–11; L. Aucoc, *Droit Administratif* (1885), I, 98–116; A. Batbie, *Traité de Droit Public et Administratif* (1885), I, 205–209, IV, 145–177; F. J. Goodnow, *Comparative Administrative Law* (1893), II, 140–143.

JAMES W. GARNER.

CENTRALIZATION, GROWTH OF, IN THE UNITED STATES

Definition.—The growth of centralization means the concentration of power in the hands of relatively fewer authorities. This power may be legislative, executive or judicial in character. Centralization may come about by the increase in the legal power of the authorities concerned, by the growth of extra-legal organizations such as party machinery, by the skilful use of power already enjoyed, by the occupation of new fields of activity as social and economic conditions change, and by the development of sentiments of attachment to central as opposed to local institutions.

Tendency.—It is commonly assumed that centralization is a "natural" tendency in all governments, that it is in itself undesirable, and that liberty grows by increasing the sphere of local autonomy, and the subdivision of functions among numerous bodies, and officers. This assumption, like all other political doctrines, has its historical origin—it is traceable to the liberal reaction against the centralized monarchy of the old régime in France and the autocratic system of local administration by the landed gentry which prevailed in England previous to the reforms of the nineteenth cen-

tury. This assumption was transplanted to America and found a fertile soil. The experience of the colonists led them to cherish local autonomy as the chief safeguard of their liberty. The social and economic condition of the times distinctly favored this doctrine, and viewed in relation to those conditions it was "natural and sound." When, however, it hardens into a political dogma for all times and conditions its universal validity must be denied.

Federal Centralization.—The most marked feature of centralization to be observed in the United States has been the transformation of an aggregation of states, holding themselves free, sovereign and independent under the Articles of Confederation (*see*), into a nation, in which the state has sunk almost to the position of a unit of local government. The underlying forces in this transformation have been economic; the development of new western states having none of the institutional traditions of the old eastern commonwealths; the complete freedom of trade among the states; the revolution in the facilities for communication and travel; and the development of nationwide corporations and business undertakings. The institutional accompaniments which have followed the action of these nationalizing forces have been constitutional, statutory, and customary.

Judicial Control.—The Thirteenth, Fourteenth, and Fifteenth Amendments (*see*) to the Constitution of the United States (and more especially the Fourteenth), for practical purposes, subject all state legislation of any economic interest to the scrutiny and adjudication of the Supreme Court of the United States. In other words, the most fundamental of all government functions—the protection of property rights—under these Civil War amendments is now vested in the Supreme Court, a highly centralized institution. This is the culmination of a long process in the evolution of the federal judiciary. The first Judiciary Act of 1789 began the development by creating federal district and circuit courts, and providing the methods by which state statutes and judicial decisions could be drawn before the Supreme Court and set aside. Under Chief Justice Marshall (*see* MARSHALL, JOHN), the fullest advantage was taken of the judicial functions to bring all state legislation affecting contracts and rights enjoyed under the central Government under judicial control, in spite of the vehement protests of the states affected by his decisions, notably Virginia (*see* COHENS VS. VIRGINIA), Kentucky and Ohio. The centralizing effect of this judicial control was recognized early and attacked by the champions of states rights (*see*); and, for a time, under Chief Justice Taney, judicial centralization was checked by liberal interpretations in favor of the state (*see* DRED SCOTT CASE). When, however, the slave owners needed the protection of the central Government against the actions of northern states in fugitive slave cases, the Supreme Court, through Chief Justice Taney (*see*), rendered a decision in the case of Ableman *vs.* Booth (21 *Howard* 506) in which the extreme form of judicial control was definitely laid down. In this case Taney declared that the Federal Constitution was the supreme law of the land and that its ultimate interpretation lay not with the courts of the states but with the Supreme Court of the United States.

After the Civil War judicial centralization rapidly advanced under the Fourteenth Amendment. That it was the intention of the framers of that amendment to bring the central Government, and particularly the judiciary, to the defense, not only of freedmen in the South, but also of property and corporations throughout the Union, there can be no doubt. This was definitely stated in 1882 by Roscoe Conkling (previously a member of the reconstruction committee that framed the Fourteenth Amendment) who positively declared that when the Fourteenth Amendment was drafted "individuals and joint stock companies were appealing for executive and administrative protection against invidious and discriminating state and local taxes." Under the sweeping provisions of the Fourteenth Amendment (*see*) a judicial centralization has been set up, which, as the governor of Kansas recently declared, reduces "the legislatures of theoretical sovereign states . . . to the level of the city councils and school district boards" (60 *Kansas Reports* 356). The state governors at their annual conference in 1911 took occasion to protest strongly against this form of centralization.

Legislative Control.—In the legislature of the Federal Government centralization at the expense of the states has not been so marked. Congress on three notable occasions has curtailed somewhat the powers of states: in 1842 when it provided that members of the House of Representatives should be elected by district ticket thus making a uniform standard throughout the United States; in 1866 when it established a general rule for the election of Senators; and again in 1870–1 when it established federal supervision in national elections (repealed by 1894). The Federal Government has also occupied the field of bankruptcy legislation (*see* BANKRUPTCY, CONSTITUTIONAL PROVISIONS AFFECTING) by legislation under its commerce power, for example, interstate commerce and pure food laws (*see* INTERSTATE COMMERCE LEGISLATION; PURE FOOD), Congress has covered a large domain of economic activity. But this legislation can scarcely be said to have deprived the states of any substantial power—it merely takes possession of hitherto unoccupied fields, although of course it sets aside state legislation whenever there is a conflict.

Executive Centralization.—As between Congress and the President it can hardly be said that there has been a consistent tendency to increase the power of either at the expense of the other. The distribution of power between the two depends upon which of them is most warmly supported by popular sentiment. Jackson (*see* JACKSON, ANDREW), representing a militant democracy, was able, at length, to dominate Congress. A generation later Congress was able to override President Johnson (*see* JOHNSON, ANDREW), who had incurred a widespread popular hostility; and for a time publicists were able to speak with truth of "Congressional" Government. At the opening of the twentieth century the pendulum was swinging back in the other direction and under President Roosevelt executive power rose to perhaps its highest point in our history. As was stated in the Senate, every one of the great laws which constituted the Republican legislative record of the period 1900–1906 was passed upon the recommendation of President Roosevelt (*see* ROOSEVELT, THEODORE). He lent his executive influence in Congressional elections, used the message as a means of agitation and pressure in Congress, and was instrumental in naming his successor.

Legislative Centralization.—In Congress, centralization proceeded during the closing decades of the nineteenth century. The Reed (*see* REED, T. B.) rulings by which the Speaker (*see* SPEAKER OF THE HOUSE) could refuse to put dilatory motions, and the subsequent development in the powers of the rules committee in which the majority members (three in number including the Speaker) were supreme, led to such a central control of business in the House that a sharp reaction came in 1910. In the Senate the "committee on committees" secured a dominant position very much like that enjoyed in the House by the Speaker and rules committee.

Centralization in State Government.—Turning to the states, we find a marked increase in the political power of the governor. This power has been in part constitutional and statutory. In the beginning of our history it was exceptional for the governor to have the veto power; now it is given to the governor of every state except North Carolina. With the increase in the number of offices, the appointing power of the governor has been augmented. But the most striking development has been in politics. Executives like Hughes of New York, Folk of Missouri, La Follette of Wisconsin, and Wilson of New Jersey frankly assumed leadership in the formulation of legislative policies and centered public attention on the executive power. The growth of the governor's influence, however, has not been accompanied by any considerable centralizing tendency in the legal structure of the state administration. While nominally charged with the faithful execution of the laws he does not possess a legal power over state administration at all comparable to that enjoyed by the President of the United States. The actual executive work of the state is divided among numerous boards (*see* BOARDS, STATE EXECUTIVE), commissions (*see* COMMISSIONS IN AMERICAN GOVERNMENT), and offices, in connection with which the governor has little appointing or removing power, or even supervising power. In view of this anomalous condition several governors have recommended a decrease in the number of state elective offices and a centralization of the now widely scattered functions of state administration. This recommendation has been substantially without avail. It may be truly said that there has been no centralization worthy of mention in state administration. The control of the state judiciary over statutes is as supreme as that of the federal judiciary; but this has met with some opposition, especially in the West where the initiative (*see*) and referendum (*see*) are in vogue, and a movement for the recall (*see*) of judges is well under way. The control of the state legislature over localities is being diminished in several important respects by the growth of the home rule movement in municipalities and the tendency to impose constitutional limitations on the free exercise of legislative power over localities. In several states, for example California, Oregon, Minnesota, Oklahoma, and Missouri, municipalities are authorized to draft their own charters. Special and local legislation is now hedged about by constitutional limitations and in Oregon the principle of home rule has been extended to counties. So far as legislative control is concerned, therefore, there is a tendency to uphold local autonomy. At the same time there has been an increase in the control of state administrative authorities over local matters. There are now state boards of health with large powers over local sanitary conditions, food and dairy products, water supplies and other matters of general state interest. There are state factory and mine inspectors, railway commissions, highway boards, charity and correctional boards, tax supervisors, excise commissioners, and educational authorities, which are subjecting local bodies more and more to uniform standards. Uniform state legislation on these matters is superseding old local variations. In county government there are no marked changes in the direction of a centralized administration.

Municipalities.—In municipal government, on the other hand, the growth of the mayor's powers and the decline of municipal councils in popular esteem are two striking features of recent development. The older practice of vesting the several branches of municipal administration in the hands of elective officers or in boards and commissions is falling into discredit, especially in the larger cities and there is a tendency to increase the appointing and removing power of the mayor (*see*) and

to centralize responsibility for the administration of the city in him. Centralization may be observed especially in the matter of finances, for the initiation of the budget in several great cities is in the hands of the mayor, comptroller, or a small board. The rapid development of commission government in municipalities which is usually accompanied by extreme concentration of power is simply one manifestation of growing centralization in municipal government.

See CENTRALIZATION; CITY AND THE STATE; COURTS, FEDERAL, JURISDICTION OF; GOVERNOR; LOCAL SELF-GOVERNMENT; CONSTITUTION, STATE, CHARACTERISTICS OF; STATE GOVERNMENTS.

References: P. S. Reinsch, *Readings on Am. Federal Government* (1909), 731, *Readings on Am. State Government* (1911), 301; F. J. Goodnow, *Politics and Administration* (1900), *Principles of the Administrative Law of the U. S.* (1905), Columbia University, *Studies in History, Economics and Public Law*, VIII. No. 2 (1897), IX, No. 3 (1898), X, No. 3 (1898), XVI, No. 3 (1903), XVII, No. 1 (1903) XVIII, No. 1 (1903); F. Pierce, *Federal Usurpation* (1908). CHARLES A. BEARD.

CENTRALIZED STATE. See STATES, CLASSIFICATION OF.

CERTIFICATE CF ELECTION. See ELECTION, CERTIFICATE OF.

CERTIFICATES TO TEACHERS. In most states teachers in public schools are obliged to undergo some official test of their preparation and probable efficiency. This ranges all the way from a severe state examination to an interview with a county superintendent or trustee of a district school. Under the best state systems no teacher can be employed who has not undergone an examination of which the evidence is a certificate, commonly good for a specified period, of one, two or more years. In some states a life certificate is granted after re-examination, or a fixed number of years' service, or both. See EDUCATIONAL ADMINISTRATION; SCHOOLS, PUBLIC, SYSTEM AND PROBLEMS OF; TEACHERS, LEGAL QUALIFICATIONS OF.

A. B. H.

CERTIFICATION. See COURTS, FEDERAL.

CERTIFIED PUBLIC ACCOUNTANTS. A certified public accountant is one who hires his services out to such firms, companies or public institutions as desire verification of their accounts or guaranteed statements for the public. As the value of statements made to regulating or investigating commissions, to investors, to directors, etc., depends upon the accuracy of accounting methods and the reliability of the work of public accountants, a high standard of professional duty, reasonable intelligence and honorable purpose must be demanded of them. To help to attain these ends, many of the states now provide for examinations, the successful passing of which carries the degree of C. P. A. (Certified Public Accountant). The first act authorizing this degree was passed by the state of New York in 1896. The Pennsylvania law provides for biennial examinations by a board of five examiners, three of whom must be accountants of recognized standing, and two of whom must be attorneys at law. See FINANCIAL STATISTICS; PUBLIC ACCOUNTS. References: R. Brown, *Hist. of Accounting and Accountants* (1905); C. W. Haskins, *Accountancy, Its Past and Present* (1900); S. S. Dawson, *Accountant's Compendium* (2d ed., 1911); G. Lisle, *Accounting in Theory and Practice* (1899); F. W. Pixley, "Auditors and Their Liabilities" in Congress of Accountants, *Proceedings; The Accountant*, I (1877); *Accountants' Journal*, I (1883–1884).

C. L. K.

CERTIORARI. A writ which originated early in English practice, and was issued out of the Court of Chancery or the King's Bench, to the judges of inferior courts commanding them to send the record of proceedings in a specified case, pending in such inferior court, to a superior court, for a judicial review of the acts of the lower court. Originally only the jurisdiction of the lower court and its rulings of law were inquired into. In the United States this "extraordinary legal remedy" has tended to fall into disuse in reviewing the proceedings of strictly judicial tribunals, having yielded to the writ of error, a more comprehensive, but less summary remedy. But it is frequently resorted to now for the purpose of reviewing and correcting the acts of public officers and quasi-judicial bodies, such as boards and commissions, which, though they possess judicial functions, are not subject to supervision by appeal or writ of error. The remedy is regulated by statute in most if not all of our states and in Oregon, Indiana and Massachusetts is termed a "writ of review," a more descriptive name. See APPEALS FROM LEGAL DECISIONS. H. M. B.

CESSIONS BY STATES TO THE FEDERAL GOVERNMENT. The original public domain was composed of lands claimed by certain of the states and covered by cessions to the United States. Of the thirteen original states, six claimed, under their charters, territory lying to the west of their present limits, and New York claimed a large extent under treaties with the Six Nations. These claims were early disputed by states having no western lands, and the question threatened the stability of the new government. It was not until New York and Virginia offered to cede their claims that Maryland agreed to join the Confederation (1781). The cessions were ac-

cepted by Congress as follows: New York, 1782; Virginia, 1784; Massachusetts, 1785; Connecticut, 1786; South Carolina, 1787; North Carolina, 1790; Georgia, 1802. The first five cessions were made during the Confederation and served to strengthen the weak bond between the states. The cessions of New York, Massachusetts, and South Carolina were unqualified, the others contained reservations and stipulations of various kinds. The jurisdiction of the Connecticut "reserve" passed to the Federal Government in 1800 (*see* WESTERN RESERVE). These cessions covered, nominally, 259,171,787 acres. Texas ceded land claimed by her north and west of her present boundaries amounting to about 101,360 square miles, and in 1850 received for this and other claims $10,000,000. In the adjustment after the Revolution the following cessions were made by the Federal Government: 202,187 acres on Lake Erie, sold to Pennsylvania in 1788 for $151,640; a portion of the South Carolina cession, about 1,500 square miles, granted to Georgia in 1802; all the unclaimed lands in the North Carolina cession granted to Tennessee by acts of 1806 and 1846. To constitute the District of Columbia, Maryland ceded a tract of 38,400 acres in 1788, and Virginia ceded a tract in 1789, which was retroceded in 1846. See BOUNDARIES, INTERIOR; LAND GRANTS; PUBLIC LANDS, AND PUBLIC LAND POLICY; PUBLIC LANDS, STATE; TERRITORIAL

CESSIONS OF THE STATES TO THE FEDERAL GOVERNMENT

JURISDICTION OF THE U. S. WITHIN THE STATES. **References:** Thomas Donaldson, *Public Domain* (1884), 56–68; H. B. Adams, *Maryland's Influence upon Land Cessions to the U. S.* (1885); J. C. Welling, "Land Politics of the United States" in New York Historical Society, *Papers* (1888); J. B. Lewis, *Historical Sketch;* George Bancroft, *Hist. of Const. of U. S.* (1893), II.

PAYSON J. TREAT.

CHAIRMAN, PERMANENT. See PERMANENT CHAIRMAN.

CHALLENGE OF VOTERS. See VOTERS, CHALLENGE OF.

CHAMBERS OF COMMERCE. See COMMERCE, CHAMBERS OF.

CHANCELLOR OF THE EXCHEQUER. This title is applied to the head of the Treasury Department, or more strictly the board of "Lords Commissioners for executing the office of Lord High Treasurer," of the English Government. He corresponds to the Secretary of the Treasury in American administration, except that according to the English plan of cabinet membership and leadership in Parliament, he exercises more power in the framing of revenue and money bills. See BUDGET, EUROPEAN SYSTEM OF. **Reference:** A. J. Wilson, *The National Budget* (1882), ch. vi.

D. R. D.

CHANCERY. In England, formerly the highest court of judicature next to Parliament, now a division of the High Court of Justice. In the United States a court of general equity jurisdiction, separately organized in some states, but in others a court of law sitting also as a court of equity. See EQUITY.

H. M. B.

CHARGÈ D'AFFAIRES. Chargé d'affaires may be the grade of the regularly accredited diplomatic agent or may be the grade of a person acting as diplomatic representative when the chief of the mission is absent. Chargés d'affaires rank below ministers resident and are sent directly to a foreign state and accredited to and received by the minister of foreign affairs.

The United States *Instructions to Diplomatic Officers* (1897) mentions as accredited by the President:

> Chargés d'affaires, commissioned by the President as such, and accredited by the Secretary of State to the minister for foreign affairs of the government to which they are sent.
> In the absence of the head of the mission the secretary acts *ex officio* as chargé d'affaires *ad interim*, and needs no special letter of credence. In absence, however, of a secretary and second secretary, the Secretary of State may designate any competent person to act *ad interim*, in which case he is specifically accredited by letter to the minister for foreign affairs.

See DIPLOMACY AND DIPLOMATIC USAGE; DIPLOMATIC COMMISSIONERS; EXTRATERRITORIALITY; INTERCOURSE OF STATES; LEGATION, SECRETARY OF; LEGATIONS; NEGOTIATIONS OF TREATIES BY THE UNITED STATES.

References: J. B. Moore, *Digest of Int. Law* (1906), IV, 430; F. Van Dyne, *Our Foreign Service* (1909), 51, 64. GEORGE G. WILSON.

CHARITIES AND CORRECTION, STATE BOARDS OF. Supervision of charities by state authority is maintained under four different methods: (1) by state boards of charities with supervisory power; (2) by state boards of control, *i. e.*, state boards of trustees administering all or most of the public charitable and correctional institutions of the state; (3) by commissions controlling groups of state institutions; (4) by state commissioners, individuals exercising authority similar to that of state boards of charities.

(1) State boards of charities are boards which have powers of visitation, inspection and report upon institutions administered by the commonwealth, by counties, by municipalities, or by private organizations: such boards exist in Massachusetts, New York, Indiana, California, and other states. Some state boards of charities have limited executive powers: for example, the boards of Massachusetts and Indiana have authority to receive and care for dependent children; but, for the most part, the authority of these boards is limited to the inspection of institutions, collection and publication of facts, and recommendations to their administrative boards and to the legislature. In most cases plans for public institutions are required to be submitted to the state board of charities for examination and advice. Most state boards of charities have certain supervisory powers over certain private institutions and societies, especially those which receive grants from the public treasury and those which care for wards committed by the public courts. The state boards of New York, Indiana and California have powers of inspection and license over private institutions for dependent or delinquent children.

(2) State boards of control exist in Rhode Island, Ohio, Illinois, Wisconsin, Minnesota, Iowa, Kansas, and other states. In most cases these boards have complete control of all of the institutions for the insane, feeble-minded, epileptics, dependent and delinquent children, and, in some cases, of the correctional institutions of the state. They control the financial administration, appoint superintendents, and establish rules for the administration of the institutions. In most cases the law is framed with a view to keeping these boards and the institutions under them free from partisan political control. The board members receive salaries ranging from $2,000 to $5,000 per year. The system is advocated on the ground of financial economy and administrative effi-

ciency. It is criticised because of the possibility of establishing a powerful political machine, and because of the tendency toward rigid administrative machinery.

(3) The group system is employed in some states: for example all of the insane hospitals may be under one board of trustees, all of the correctional institutions under another, institutions for children under another, and so forth. This plan is followed partially in the state of New York and in the state of California. It prevailed formerly in the state of Minnesota. It is advocated, on the ground that better administration can be better secured by grouping like institutions under separate administrations than by combining dissimilar institutions under one board.

(4) State commissioners of charities are appointed in New Jersey and Oklahoma. In those states a single state commissioner of charities has the supervisory powers which in other states are exercised by state boards of charities. This plan has the merit of fixing responsibility, but it deprives the state of the voluntary services of men of large social experience which are secured under the plan of state boards of charities.

See Charities, Public Agencies for; Children, Dependent, Public Care of; County Jails; Criminal, Reformation of; Criminology; Criminal Registry; Defective Classes, Public Care of; Education of the Blind; Insane, Public Care of; Penitentiaries; Poverty and Poor Relief; Social Reform Problems.

References: F. H. Wines, "State Boards of Charities" in Nat. Conf. of Char. and Correction, *Proceedings* (1900), 63–72; Nat. Conf. of Char. and Corrections, *Proceedings* (1874 to date); W. P. Letchworth, "Organization, Powers, and Duties of State Boards," in Nat. Conf. of Char. and Corr., *Proceedings* (1892), 13–22; H. C. Wright, *Fiscal Control of State Institutions* (1911); H. H. Hart, "Report of the Committee on State Boards of Charities" in Nat'l. Conf. of Char. and Corrections, *Proceedings* (1889), 89–102.

Hastings H. Hart.

CHARITIES, ASSOCIATED

Origin and Spread.—The term "associated charities" is a generic name for a class of philanthropic institutions. As the name indicates, most of these societies endeavor to coördinate and bring into harmonious coöperation all of the philanthropic agencies of the community in which they are established.

The charity organization movement originated in London. An association was organized in Germantown, Pennsylvania in 1874 which adopted a number of the principles of the London Charity Organization Society, but the first complete charity organization of the London type in the United States was organized by the Rev. S. H. Gurteen in Buffalo, in 1877. The charity organization movement extended rapidly through the United States until there were, in 1912, 246 societies in the United States, operating under many different names; as Associated Charities; Charity Organization Societies; Societies for Organizing Charity; United Charities, etc., distributed through forty-three states and territories, as follows: Massachusetts, 26; New York, 24; Indiana, 19; New Jersey, 15; Ohio, 15; Illinois, 13; Pennsylvania, 13; California, 11; Wisconsin, 9; Connecticut, 7; Iowa, 7; Michigan, 7; Missouri, 6; Texas, 6; Georgia, 5; Kentucky, 5; Virginia, 5; Washington, 5; Colorado, 4; Kansas, 3; Maine, 3; Minnesota, 3; New Hampshire, 3; North Carolina, 3; Rhode Island, 3; Tennessee, 3; Florida, 2; Maryland, 2; Nebraska, 2; North Dakota, 2; South Carolina, 2; West Virginia, 2; Alabama, 1; Arizona, 1; Arkansas, 1; Delaware, 1; District of Columbia, 1; Louisiana, 1; Mississippi, 1; Montana, 1; Oregon, 1; Utah, 1 Hawaiian Islands, 1.

Coöperative Action.—Certain principles are generally recognized as belonging to the charity organization movement: the name Associated Charities or Charity Organization Society implies a coördination and efficient cooperation of the charitable agencies of the community. In some cities the Associated Charities is an association of the leading local philanthropic agencies. In other communities, the Associated Charities is an independent organization which undertakes to harmonize the relations and endeavors of all the other charities. Progress in this direction was slow at first because of mutual misunderstandings and because of the inertia which resides in old and established institutions; but steady progress has been made in bringing together the social forces of the cities. At first the charity organization movement was confined chiefly to the great cities of the country, but gradually it was discovered that coöperation is quite as important and effective in the smaller cities as in the large ones.

Diagnosis.—The charity organization idea is based upon diagnosis. It seeks to discover the underlying causes of poverty, pauperism, vice, etc., and to apply adequate remedies. Thus the charity organization societies have been drawn into a general study of conditions of family and social life, employment, wages, health, housing, transportation, rural conditions, pawnshops, public and private relief, public and private institutions, etc. As a result of

these studies, the matter of immediate alleviation of misery has taken a secondary place and the effort to deal in a large way with the removal of causes and the prevention of misery has been brought to the front. The same principle of diagnosis applies to the individual family and the individual person. It is as impossible to minister intelligently to social needs without an intelligent study of the case, as it is to practice medicine without a proper diagnosis.

Records.—The charity organization movement stands for adequate and thorough records. Having made a diagnosis and prescribed a remedy, a record becomes highly important for future reference. Records are made much more full and complete than formerly and preserved with scrupulous care. The larger societies have records including elaborate stenographic reports, of the history and progress of families under the influence of the society. In the best organized cities, daily reports are made by coöperating agencies, such as almshouses, public outdoor relief officers, relief societies, free dispensaries, children's aid societies, orphan asylums, etc. From these reports indexes are prepared which make it possible for authorized agents to get in touch with the different agencies which have dealt with the family or individual. It is possible to handle these reports in such a way as not to expose to unauthorized people any of the confidential facts which are on record.

Workers.—The advance of the charity organization movement has created a demand for high grade service. The social worker presumes to enter a family to make inquiry with reference to its most sacred and private affairs; to ascertain the heredity and the personal history of the members of the family; to discover their financial resources; and even to determine whether they are fit to bring up their own children. These inquiries are necessary to efficient service but they cannot be committed to unauthorized and inexperienced people. As a result, there have been established training schools for social workers in New York, Boston, Philadelphia, Cincinnati, St. Louis, and Nashville; and the training school has been supplemented by practical experience under direction before the larger responsibilities of the service can be undertaken. As a result, this department of social service is attracting high grade men and women; but as yet the supply of first class material is less than the demand.

Relief.—The earlier charity organization societies were disposed to leave the immediate relief of distress to existing relief societies and other charitable agencies, and to devote themselves to the larger social service of those who were in need. The original Buffalo Charity Organization Society adopted the motto: "Not Alms but a Friend." As the movement progressed, however, there was a tendency to consolidate charity organizations with relief societies. This was done, for example, in Chicago and Cleveland, while in many other cities the duty of immediate relief was undertaken from the start. In small communities it was found impracticable to maintain two independent agencies, while in many larger communities the Associated Charities was forced to undertake relief work in order to insure efficiency. Probably four fifths of the existing societies now carry on the work of immediate relief. In cities like Boston, New York, Pittsburg and St. Paul, where separate relief organizations exist, they usually work in close coöperation with the charity organization society.

Sympathy.—Fears have been expressed that the charity organization movement would tend to perfunctory and unsympathetic dealings with the needy. In practice, the tendency has been largely the other way. There is a tendency toward the human aspect of the work, a sympathetic recognition of need, and an intense and practical desire to supply it adequately. This tendency is supported by the improvement in the quality of social workers already mentioned. It is promoted also by the emphasis laid upon the human and spiritual side of social work by such writers as Miss Mary E. Richmond, Dr. Edward T. Devine and Mr. Alexander Johnson.

Support.—As a rule charity organization societies are supported by private contributions and are controlled by voluntary boards of trustees. Most of these societies, however, maintain close relations with the public charitable officials and institutions and many of them have their offices in city halls or county court houses, such offices being given, rent free, in recognition of the public service rendered. In the city of St. Paul, the Board of Control of the city and county is one of the constituent societies composing the Associated Charities; and for many years the salary of the secretary was paid by the city as its share of the expense of maintaining the board. In other cities, funds are appropriated toward the expense of the society on the same grounds. It is an open question whether grants of public funds should be accepted by charity organization societies in view of the abuses that some times arise in connection with such grants.

See CHARITIES, PUBLIC AGENCIES FOR; CHARITY ORGANIZATION SOCIETIES; OUTDOOR RELIEF; POVERTY AND POOR RELIEF; SOCIAL REFORM PROBLEMS.

References: Charity Organization Societies of New York, Buffalo, Denver, Baltimore, *Annual Reports;* Philadelphia Society for Organizing Charity, *Annual Reports;* Associated Charities of Boston, Cleveland, San Francisco, Washington, D. C., *Annual Reports;* United Charities, of Chicago, Memphis, *Annual Reports;* C. D. Kellogg, *Hist. of Charity Organization in U. S.* (1893); E. T. Devine, *Prin-*

ciples of Relief (1904); Nat. Conf. of Char. and Corrections, *Proceedings* (1874 to date); C. R. Henderson, *Modern Method of Charity* (1904); A. G. Warner, *Am. Charities* (1908); *Am. Year Book, 1911,* 392, and year by year.
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CHARITIES, PUBLIC AGENCIES FOR. **State Paupers.**—Public care of the poor may be maintained by state agencies, county agencies, or municipal and local agencies (cities, villages, townships, boroughs, etc.); or by a combination of two or more such agencies.

In Massachusetts, state paupers are those for whom no "settlement" can be established; while those whose settlement can be determined are a charge upon their respective cities or towns. The state maintains a state almshouse, while local almshouses are maintained by the various cities and towns. New York also has a state pauper system which cares for a limited number of poor persons, under the charge of a state superintendent. City and town paupers are under the care of the overseers of the poor.

County Paupers.—In states where the county system prevails, poor persons may be under the charge of county commissioners, county directors of the poor, county superintendents of the poor, or county overseers of the poor. In communities where the city or town system prevails, they may be under the care of the mayor, the city superintendent of the poor, aldermen, village officers, township trustees, or other agents.

Settlement.—In some states, especially in Massachusetts, much attention is given to the question of settlement, in order to determine what community shall be made responsible for the care of the pauper; or to determine whether he is a non-resident of the state, and, if so, whether he can be returned to the state or county to which he legally belongs.

For many years the states of Massachusetts and New York have maintained expensive agencies for the deportation of non-resident paupers. Under the laws of the United States, any steamship company landing a criminal or any person who may become dependent within the period of one year, may be required to transport the individual to the port from which he embarked, at its own expense. Alien dependents who may have resided in the United States for a longer period, may be returned to their native country, but the expense must be paid by the state or municipality returning them. The state of Massachusetts returned to foreign countries in 1910 224 insane persons and 230 poor persons at a cost of about $10,000. The state of New York returned to foreign countries, during the year ending Sept. 30, 1910, 738 poor persons at a cost of $9,646, and 453 insane persons (expense not stated). Agencies for the deportation of non-resident dependents are maintained by Minnesota, Wisconsin and some other states; but the work done by such agencies is very much less than in the states of New York and Massachusetts. The establishment of duly accredited agencies for determining the status of alien paupers, and for their prompt return to their proper place of residence, is a matter of great importance. Where such agencies do not exist, poor persons often suffer great hardship owing to disputes between the poor authorities of different communities.

Forms of Relief.—The forms of relief may be: (1) "indoor relief" (almshouse care); (2) "outdoor relief" (assistance given to the family outside the almshouse); (3) medical relief, including care in hospitals and public sanitariums and treatment by physicians employed by the public authorities; (4) transportation; (5) securing employment; (6) advice and direction.

Indoor Relief.—Almshouses are institutions provided at public expense for the care and maintenance of poor and helpless persons. By such terms as "county asylums," "infirmaries," etc., the effort is made to soften the reproachful term "almshouse." In the older and more thickly settled communities, the almshouse is usually maintained entirely at public expense. The superintendent and employees are paid fixed salaries, all bills are paid from the public treasury and any sales of produce, etc., are turned into the public treasury. But in many thinly settled communities the superintendent is paid a weekly allowance for the board of each inmate, usually being allowed the use of the building and land rent free.

In some communities the "workhouse test" is applied; that is, public relief is refused to individuals who are thought to be possibly able to care for themselves, unless they consent to go to the almshouse. The workhouse test is criticised because it works hardship to the self-respecting poor person who desires to maintain his independence. It is claimed that the authorities ought not to substitute an arbitrary test for their own patient and discriminating study of the needs of the applicant.

In the same line the policy has been pursued in many communities of making the almshouses cheerless and forbidding places, in order that paupers may not desire them because ot their comfort. In others there is no public almshouse, but a contract is made with some citizen to maintain an almshouse in his own house, payment being made for the board of inmates by the week.

Farming Out System.—In some communities the inexcusable plan is still followed of farming out the poor house and its inmates to the lowest bidder. Under the most favorable circumstances, the profits of the superintendent must be made by economizing in the care, food and clothing of the helpless people under his charge. In multitudes of almshouses maintained on this plan, unsanitary conditions pre-

vail, while dirt and vermin abound. The food is meagre and ill prepared, the attendants are incompetent and inhuman; most of the inmates are filthy in their habits, and disgusting in their manners and language. Many of them are diseased, and many go to the almshouse because they are so disagreeable even to their own relatives that no one will keep them elsewhere.

Difficulties.—Any one who carefully inspects almshouses soon ceases to condemn those self-respecting poor people who are unwilling to accept the shelter of the almshouse. Familiarity with the cheerlessness of the almshouse, the almshouse smells, the disagreeable sights and sounds, the disgusting habits of eating, the coarse, profane and indecent language of many of the inmates, justifies much of the popular prejudice.

An almshouse inmate has been seen in bed wearing shoes and hat; men and women paupers unrelated are sometimes kept in the same room. Patients with cancer and other disgusting and dangerous sores, insane patients, epileptics and drug fiends often mingle with other inmates. In an almshouse where the bath tubs did not connect with the drains or the water pipes, inquiry was made, "How often do the inmates bathe ?" The supreintendent replied, "I think that some of these old people never bathe. In summer they wash in the creek."

In many communities almshouses are well designed, well furnished, and efficiently administered. The best superintendents are usually farmers of the better class who receive salaries of $1,000 to $1,800 yearly, with maintenance. In the larger almshouses it is possible to classify the inmates according to physical condition, habits, etc., and to group in cottages those of refined instincts and decent habits; but even in the best small almshouses such segregation is difficult. In the almshouses of the interior, few able-bodied paupers are found. In these days a sane woman capable of any efficient work need not go to the almshouse if she is cleanly and well disposed. But in many large communities a considerable number of men who are able to work drift into the almshouses in the winter and also during seasons of industrial depression.

The plan of conducting a large farm in connection with an almshouse is objectionable, for the reason that the farming calls for a large portion of the time and strength of the superintendent, and throws the burden and responsibility of administration largely upon his wife. It is better to have a small sized farm which will furnish pasturage for cows, with sufficient room for orchards and gardens, rather than to go into the farming business, which must be carried on by employing outside help. The apparent profit from poor farms usually disappears if any allowance is made for the rental value of the land.

See Charities, Associated; Charities, Public Agencies; Defective Classes, Public Care of; Dispensaries, Free; Employment Agencies; Feeble-minded, Public Care of; Hospitals, Public; Incurables, Public Care of; Insane, Public Care of; Lodging Houses, Public; Outdoor Relief; Poor Law Guardians in England; Poor Laws; Poverty and Poor Relief; Social Reform Problems; Social Settlement; Vagrancy.

References: State Conferences of Charities, *Proceedings* (obtainable from State Secretaries); A. G. Warner, *American Charities* (1908); C. R. Henderson, *Preventive Agencies and Methods* (1910); Nat. Conf. of Char. and Corrections, *Proceedings* (1874 to date); E. T. Devine, *Principals of Relief* (1904); *Am. Year Book, 1910,* 451 *et seq., ibid, 1911,* 375 *et seq., ibid, 1912* 444–449.

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CHARITY ORGANIZATION SOCIETIES. Charity organization societies are known under different names, as associated charities, societies for organizing charity, etc. America followed the initiative of the London Charity Organization Society. The first one in the United States was established in Buffalo, by Dr. S. H. Gurteen in 1877. Societies of this class now exist in about 230 cities of the United States, including nearly all of the larger cities. Many of the smaller cities are doing effective work.

The fundamental ideas of charity organization are: (1) Coöperation: the coördination of the social forces of the community, so that public officers and institutions, relief societies, social settlements, hospitals, dispensaries, orphan asylums, industrial schools, etc., may all act together for the general social welfare. In recent years the work of charity organization societies has been enlarged to include good housing, improved milk supply, improved medical charities, loan associations, improved labor conditions, study of household economy, etc.; (2) Constructive work for the rehabilitation of those who become dependent. This purpose found expression in the motto: "Not alms but a friend." It recognizes the fact that temporary relief may leave the applicant as badly off as it found him; whereas by a constructive plan he may be speedily restored to self-support; (3) Adequate provision for the real needs of the case, either directly, from the resources of the society, or indirectly through some coöperating organization or individual charitably inclined.

See Charities, Associated; Poverty and Poor Relief; Charities, Public Agencies for; Social Reform Problems.

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CHARLES RIVER BRIDGE vs. WARREN BRIDGE. The proprietors of the Charles River Bridge brought an action in a court of

Massachusetts to abate the Warren Bridge on the ground that the use of the latter as a free bridge under legislative authority impaired the rights of the former under its charter. Relief being denied to plaintiffs in the state court (7 *Pickering's Reports* 342), plaintiffs appealed to the Supreme Court of the United States on the ground that their charter contract was impaired in violation of the United States Constitution (Article I, Sec. x). In the majority opinion, by Chief Justice Taney (1837; 11 *Peters* 420; 9 *L. Ed.* 7731), it was conceded that a corporate charter constitutes a contract which the state cannot impair (*see* DARTMOUTH COLLEGE CASE), and that a state may, by granting an exclusive franchise, limit its legislative power to grant similar franchises; but it was decided that to be exclusive the grant must be to that effect in express and unqualified terms and not by implication only, the presumption being against any intention to limit the future power of the legislature. The decree denying relief to plaintiffs was therefore affirmed. Mr. Justice Story put the dissenting opinion on the ground that under the common law a bridge franchise was in nature an exclusive grant. See CONTRACTS, IMPAIRMENT OF; CORPORATION CHARTERS.

E. McC.

CHARTERS, COLONIAL. See COLONIAL CHARTERS.

CHARTERS, MUNICIPAL. Charter-Granting Authorities.—The city charter is the organic law of the municipality, a grant of powers from the state to a subordinate public corporation. In the colonial period charters were granted to the cities by the governor of the colony or province in which communities were situated; since the Revolution, city charters have been granted by the state legislatures. Save in so far as the federal and state constitutions have imposed limitations upon the power of the state legislature in the matter, the authority of this latter body with reference to the granting, amending and revoking of city charters is unfettered and supreme.

Special Charter System.—City charters are, in the various states, obtained in any one of three different ways. Some states, as for example Massachusetts, have the special charter system. Each city obtains its charter by special statute and the requests of each community are considered by the legislature on their own merits. In those states which have the special charter system a petition, accompanied usually by the draft of a bill, for a new city charter or for charter changes comes to the legislature either from the officials of the municipality, from semi-public organizations, or from individuals. This is referred to the appropriate standing committee of the legislature; public hearings on the matter are given; a report is made by the committee to the legislature and the measure runs the course taken by ordinary legislation. When the new charter or charter amendment has passed the legislature and has received executive approval it usually, but not always, goes before the voters of the city for their acceptance or rejection at the polls.

This system has the merit of adapting charters to the diversified requirements of different cities; it permits flexibility in the municipal system of the state. But it has the defect of encouraging persistent legislative intervention in the organic affairs of individual cities; and it puts a heavy burden upon the time and patience of legislatures. Some idea of the extent of this burden may be had from the fact that at every annual session in the last decade a hundred or more proposals relating to the affairs of individual cities in the state have claimed the attention of the Massachusetts legislature. For these reasons the special charter plan has apparently been losing favor in recent years.

General Charter System.—Under the general charter plan the state legislature (either in obedience to a requirement in the state constitution, or of its own initiative) enacts a general statute or municipal code applicable to all the cities of the state or to all the cities which come within a certain category. Examples of this system are afforded by New York state at present and by the experience of Ohio prior to the adoption of the constitutional amendments of 1912. During the period 1902–1912 all the cities of Ohio, whatever their population and importance, were governed and administered under the provisions of a general municipal code which was framed and enacted in the former of these years. At the present time (1913) the cities of New York state are divided by the state constitution into three classes and, with certain rather important variations, the same charter provisions are applied to all the cities in each class. In several other states the legislature is constitutionally forbidden to incorporate or organize cities except by general laws.

The advantage of this general charter plan is that to some extent it lessens the evil of persistent legislative interference in the affairs of individual cities and it affords possibilities in the way of relieving the legislature from the necessity of considering a host of purely local matters at every session. In actual practice, however, this relief is not very great, for proposals to amend the general law in the interest of particular municipalities are brought in profusion before the legislature. It has been estimated, for example, that during the last ten years, about one third of the entire time of the Ohio legislature has been taken up by its attention to special legislation for cities in the form of proposals to amend the general municipal code. Furthermore, the general charter system is too rigid in its operations and under

its arrangements cities are often debarred from dealing with their own local problems in the most effective way. The experience of Cleveland and Cincinnati during recent years affords many examples of this handicap.

Home-Rule Charter System.—The home-rule plan was first established in Missouri by the constitution of 1875, but has since gained acceptance in eleven other states of the Union (California, Washington, Minnesota, Colorado, Oregon, Oklahoma, Michigan, Arizona, Ohio, Texas, and Nebraska). Among these states there are considerable variations in the methods and machinery of home-rule charter-making; but in general each municipality is permitted to prepare, through an elective board of freeholders or charter-drafting committee (in Minnesota this body is appointed by the district court), such frame of city government as seems most nearly suited to its own local needs. This charter (or charter amendment) is submitted to the voters. If accepted by them the charter in some states goes into effect at once. In other states it must first be submitted to the legislature (as in California) and the legislature may reject the charter but may make no amendments to it. In others (as in Oklahoma and Michigan) it goes to the governor, who has certain veto powers over it. Various other details connected with the system also differ from state to state. The home-rule charter system has many obvious merits in the way of providing a flexible system of municipal government, in relieving the legislature from the consideration of purely local matters, and in reducing legislative interference in the affairs of particular communities. On the other hand it is frequently urged that a great many matters which may be chiefly local in import are to a considerable degree questions of state-wide interest as well. Such are police administration, the control of public education, the local arrangements governing nominations and elections, the system of municipal taxation and the supervision of the liquor traffic. In these and some other fields of administration the policy of permitting every city to be a law unto itself would be detrimental to the best interests of the state as a whole. Hence the courts in home-rule charter states have generally ruled that when a local charter provision conflicts with the terms of a general law relating to these matters, the latter must be followed. These decisions greatly narrow the real sphere of local autonomy under the home-rule system. On the whole, however, the plan has been found to have a balance of advantage over both the special and general charter systems.

Ohio Plan.—A possible improvement over any of these three plans may be found in the arrangements made by the Ohio constitutional amendment of 1912. Under this provision any city of that state is now permitted, at its own option, to obtain a special charter, or to accept the provisions of the general municipal code, or to frame a home-rule charter for itself. This system may in time be found to have afforded a satisfactory solution for what has been a difficult problem in American municipal government—that of continuing a reasonable degree of central supervision with a proper measure of local autonomy.

Scope of Charters.—Municipal charters define the powers of cities, outline their organs of government, determine the methods of selecting mayor, councilmen and other municipal officers, assign to all officials their respective duties, and fix the relations of these officials to one another. Some charters determine these matters in a general way, leaving the details to be arranged by ordinance. Others specify all things with great minuteness. Where there are differences of opinion concerning the express or implied powers conferred by a city charter the courts have usually departed from the rule which ordinarily governs the interpretation of provisions in the charters of private corporations and have given such powers a liberal rather than a strict construction. It is almost needless to add, moreover, that city charters throughout the country show the widest variation both in form and substance. From this point of view they defy any approach to classification.

See City and the State; Contract, Impairment of; Commission System of City Government; Municipal Government in United States, Organization of; Ordinances, Municipal; Social Compact Theory.

References: F. J. Goodnow, *Municipal Home Rule* (1897); A. R. Hatton, *Digest of City Charters* (1906); C. A. Beard, *Digest of Short Ballot Charters* (1911); M. R. Maltbie, "City-Made Charters" in *Yale Review*, XIII (1904), 380–407; M. A. Schaffner, "Home Rule Charters" in Legislative Reference Department of the Wisconsin Library Commission, *Bulletin No. 18* (1908); J. F. Dillon, *Law of Municipal Corporations* (1911), I, 110–118; W. B. Munro, *Government of American Cities* (1912), ch. iii.

William Bennett Munro.

CHARTERS OF CORPORATIONS. See Corporation Charters.

CHASE, SALMON PORTLAND. Salmon P. Chase (1808–1873) was born at Cornish, N. H., January 13, 1808. In 1829 he was admitted to the bar of the District of Columbia, and the next year began practice at Cincinnati. Although not then an abolitionist, he rapidly gained prominence as a leader of the anti-slavery forces of the Middle West. In 1841 he joined the Liberty party, and in 1848 was the leading spirit in the Free-Soil convention at Buffalo. In 1849 he was elected United States Senator by a coalition of Free-Soilers and Democrats, and, in the Senate, continued to lead the anti-slavery opposition. In 1855 he joined the Republican party; was governor of Ohio

from 1856 to 1860, and in the latter year a candidate for the presidency. He was again elected to the Senate, but resigned March 5, 1861, the day after he took his seat, to become Secretary of the Treasury. After a stormy career following upon new loan and tax acts, legal tender and the national bank system of which he was the advocate, he resigned the latter office on June 29, 1864, and in December was appointed Chief-Justice of the United States. His most famous opinions are Texas *vs.* White (7 *Wallace* 700) and Hepburn *vs.* Griswold (8 *Wallace* 603). In 1868 he presided at the Johnson impeachment trial, and the same year, forsaking the Republican party, sought a presidential nomination from the Democrats. He died at New York City, May 7, 1872. See CHIEF JUSTICES; REPUBLICAN PARTY; SLAVERY CONTROVERSY; TREASURY DEPARTMENT. **References:** Diary and Correspondence of Salmon P. Chase" in Am. Hist. Assoc., *Reports*, 1902, II; A. B. Hart, *Salmon P. Chase* (1899); J. W. Schuckers, *Life and Public Service of Salmon P. Chase* (1874); R. B. Warden, *Private Life and Public Services of Salmon P. Chase* (1874). W. MACD.

CHASE, SAMUEL. He was born in Somerset County, Md., April 17, 1741, and died June 19, 1811. He was a prominent lawyer when elected to the colonial legislature where he distinguished himself as an opponent to the governor. For the four years previous to 1778 he was a member of the Continental Congress. In the Maryland convention, he opposed the adoption of the Federal Constitution, for he thought it too undemocratic. In 1796, he was appointed an Associate Justiee of the United States Supreme Court. In his charge to a grand jury, 1803, he condemned the repeal of the circuit court act. For this speech and his conduct of the trial of John Fries for treason, 1800, and James Thomas Callender for libel during the same year, he was attacked by his political opponents under the leadership of John Randolph. His impeachment was secured in the House of Representatives but upon the trial by the Senate he was acquitted. See FEDERALIST PARTY; SUPREME COURT OF THE UNITED STATES. **Reference:** Henry Adams, *Hist. of the U. S.* (1891), II, 147, 149 *et seq.* J. A. J.

CHECKS AND BALANCES. It was widely believed at the time of the adoption of the Constitution that an effective way of protecting the people against arbitrary oppression was to distribute the powers of government among departments, and, by a system of checks and balances, limit the action of each to a definite sphere and provide constitutional barriers against the encroachment of each upon the domains of the others. Yet it was recognized that a total disjunction of the departments would neither be practieable nor desirable, and hence a limited participation of each in the functions of the others, as well as a certain power of control over their actions, was allowed (*see* SEPARATION OF POWERS). Following the analogy of the solar system, a well known American writer has described the arrangement as the Newtonian theory of government, which aims by a nice poise and balance of forces to preserve an equilibrium between the different organs and to give to the whole system the character of symmetry and perfect adjustment (Compare Wilson, *Constitutional Government*, 55,99). The expedient to be adopted, said Madison (*The Federalist*, No. 51), in partitioning power among the several departments is to "so constrain the interior structure of the government that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper relations." Accordingly, in organizing the National Government the House of Representatives was balanced against the Senate and the Senate against the House, by giving each a veto upon the acts of the other; the executive was balanced against the legislature by means of the President's qualified negative; the judiciary is balanced against both the executive and the legislature by the power which it has assumed of refusing to give the sanction of law to the acts of either when done without authority; the Senate was balanced against the President by requiring its consent to treaties negotiated by him and its approval of his appointments; the legislature was balanced against both the executive and the judiciary by giving it the power to impeach and remove executive and judicial officers for high crimes and misdemeanors; and the President was balanced against the judiciary by giving him the power to grant pardons to persons convicted of crime by the federal courts. Further examples might be given in which the theory was applied in the organization and distribution of the public powers. See CONGRESSIONAL GOVERNMENT; EXECUTIVE AND CONGRESS; JUDICIARY AND CONGRESS; SEPARATION OF POWERS. **References:** J. Adams, *Works*, VI (1850–56), 466–468; T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), ch. vii; J. Madison, *The Federalist* (ed. by P. L. Ford, 1898), Nos. 48, 51; J. Schouler, *Ideals of the Republic* (1908), 206; W. Wilson, *Constitutional Government in the U. S.* (1908), chs. iii, viii.

JAMES W. GARNER.

CHECKS AND DRAFTS IN GOVERNMENT SERVICE. Disbursements of public money may be made by checks drawn by disbursing officers upon government depositories. Until recently, payments to the government could be made only in money, and for certain dues, as customs duties, only in certain kinds of money. In exceptional instances, owing to necessity, internal revenue duties have been paid by checks, at the risk, however, of the collector.

By the act of March 2, 1911, payments of customs and internal revenue taxes may be made by certified checks; and the Secretary of the Treasury has recommended that this privilege be extended to all payments. State and municipal authorities habitually pay bills by checks drawn by disbursing officers, and will usually accept checks for taxes and other payments. It has been held by a Massachusetts court that delay in depositing such checks in a bank that afterwards fails is no release of the obligation for payment of taxes. See BANKING METHODS; BANKS AND BANKING, NATIONAL; DEPOSIT OF PUBLIC FUNDS; REVENUE, PUBLIC, COLLECTION OF. D. R. D.

CHEMISTRY, BUREAU OF. The Bureau of Chemistry is one of the bureaus of the Department of Agriculture (*see*) and is under the charge of the chief chemist. The work of the bureau includes the collection and examination of foods and drugs, in accordance with the provisions of the Pure Food Law, for the purpose of detecting and excluding from interstate commerce adulterated or misbranded articles. In 1911, twenty-one food and drug inspection laboratories were maintained, and 17,497 samples were analyzed, of which 34 per cent were found to be impure or misbranded. Imported foods and drugs are examined at the port of entry, and many samples were also examined at the Washington food and drug inspection laboratories. Special food investigations are conducted for the purpose of establishing standards of purity, and determining disputed questions in the administration of the law. Investigations are also made into the condition of packed fruit, dairy products, poultry, and fish, for the protection of the public. See HEALTH, PUBLIC REGULATION OF; PURE FOOD. **References:** Department of Agriculture, *Annual Reports*. A. N. H.

CHICAGO

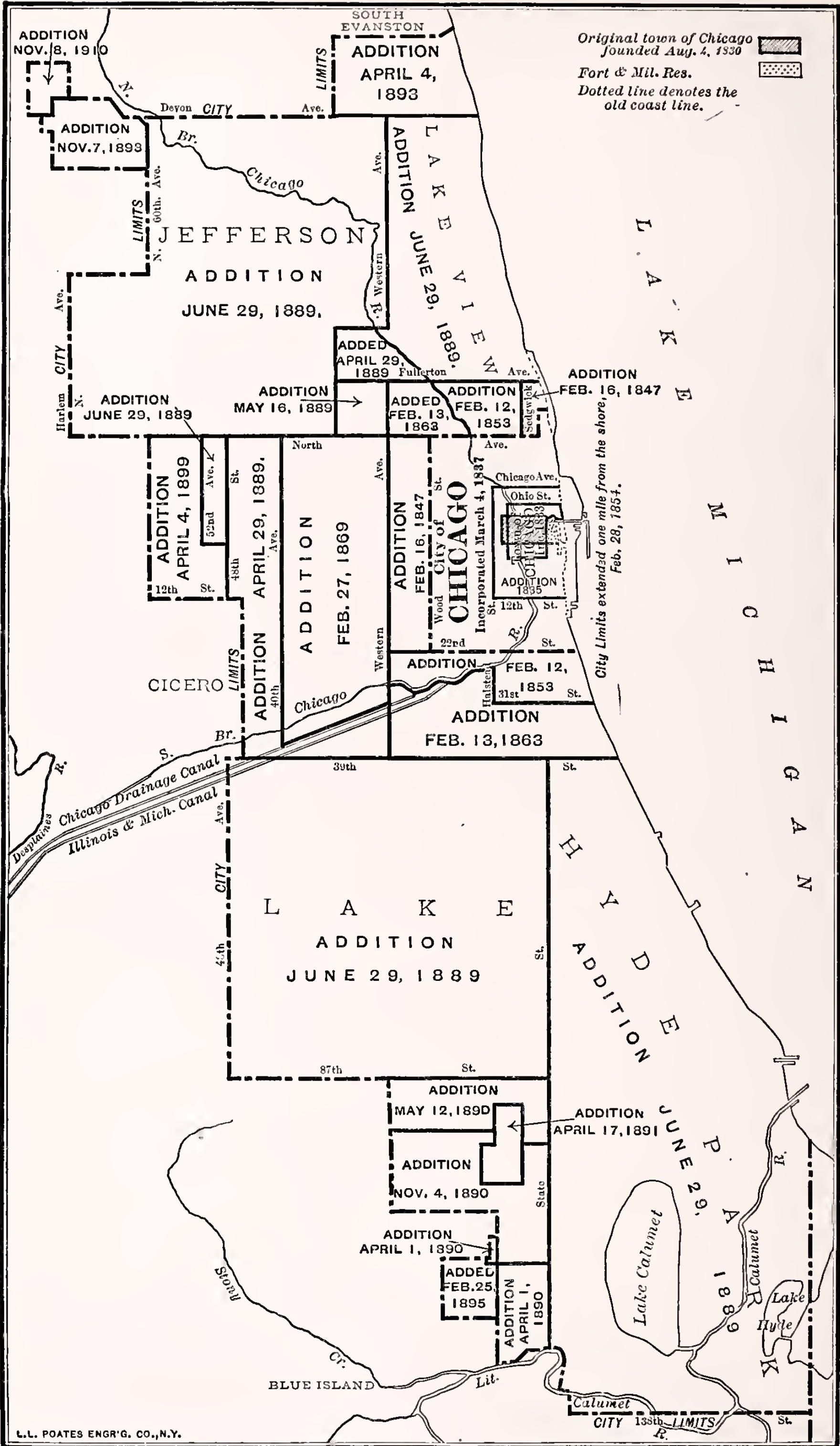
History.—The corporate history of Chicago may be said to begin with its erection into a town in 1833, under a general act of 1831. In 1837 it was incorporated as a city by special act. New charters were passed in 1851 and 1863, and important amendments from session to session of the state legislature. The facts most significant for government in Chicago have been its situation at the focus of transportation routes between east and west, its consequent importance as a railroad center, and a commercial and industrial market for the Middle West; and as a result, the phenominal rapidity of its growth. The population has increased as follows:

Year	Population
1837	4,170
1850	28,269
1860	109,206
1870	306,605
1880	503,185
1890	1,099,850
1900	1,698,575
1910	2,185,283

General Legislation.—There is no codified charter of the city of Chicago. The Illinois constitution of 1870 forbade special legislation, and the legislature passed a general Cities and Villages Act in 1872. Chicago abandoned its special charter and adopted this general act by popular vote in 1875; and with its subsequent amendments, it forms the basis of the present government of Chicago, as it does of every other city in the state from Bentley with 89 inhabitants to Peoria with 67,000.

This procrustean uniformity has been mitigated in four ways: (1) General acts have been passed, the application of which was made contingent upon adoption by popular vote, *e. g.*, the election law and the civil service law. (2) There is a group of acts applying to cities of more than 50,000 or 100,000 population, although the courts have prevented over-extensive use of the principle of classification to evade the prohibition of special legislation, *e. g.*, the local improvements law and the school law. (3) In 1904, a constitutional amendment empowered the legislature to pass special acts for Chicago, contingent upon acceptance by popular vote in the city. Under this provision, the mayor's term and powers have been extended, and a system of municipal courts established. (4) The General Act of 1872 granted to the city council a very large power of creating and abolishing departments, defining powers and duties and fixing salaries. Most of the administrative organization of Chicago rests not upon statute but upon ordinance.

Mayor and Council.—The city council consists of 70 members, two from each of the 35 wards into which the city is divided by the council after each decennial census. The term of office is two years, one from each ward being elected each year; and the salary, fixed by the council itself, is $3,000. The mayor is elected by popular vote for four years, and receives a salary, also fixed by the council, of $18,000. He is president of the council, and has a veto power, subject to repassage by a two-third vote. Two other executive officers are elective, for a two-year term: the city clerk and city treasurer. Preceding each election, a direct primary is held, in which party membership is determined as in state and national primaries, and a voter cannot change from one party to another within a space of two years. In spite of these hindrances, there has been, in recent years, a notable and increasing



BOUNDARIES OF THE CITY OF CHICAGO, SHOWING TERRITORIAL CHANGES

amount of independent voting. This has been possible because of the shortness of the ballot —never more than four offices being filled at once, and in other years either three or one; and it has been fostered and guided by Municipal Voters' League (*see*). The council is organized for work into 24 standing committees, elected annually by the council. Since 1901, this has been done on a non-partisan basis, by the adoption of a list prepared by a steering committee of six, three of each party, one each from the north side, the west side and the south side.

Large Power of Council.—The feature which characterizes the government of Chicago is the large power of its council. The powers of the council are defined principally in a list, now comprising 98 items, to be found in the General Cities and Villages Act of 1872 and subsequent amendments. The act is notable among municipal codes for the generosity of its grants of power to cities; and the fact that Chicago has, especially in recent years, been hampered by the lack of particular powers only proves the inherent vice of the principle of a grant by detailed enumeration. In three directions the power of the council is especially extensive: (1) in the control of finance; (2) in the granting of franchises and the control of public utilities; (3) in the creation, abolition and reorganization of administrative offices and departments and the definition of their duties.

(1) The council has complete control of the budget. After collecting estimates from heads of departments upon standardized forms, the comptroller submits to the council before February 15 budget proposals for the fiscal year, (which is the calendar year). This is considered by the finance committee with whom the comptroller and often the mayor sit, and reported by them in revised form as the annual appropriation bill. The council has entire power to raise, lower, insert or strike out items. The mayor has a veto over items, and this, together with his presidency of the council, makes him, especially if he has also sat with the finance committee, a powerful factor in the process.

(2) The council grants all franchises, subject to the mayor's usual veto power, and to the requirement of frontage consents. Although not required by statute, recent practice adds a popular referendum, at least for street railway franchises. The council also has power to regulate rates for gas, electric light and telephone service. In these functions, the council has in late years, through its committees on local transportation and gas, oil and electric light, developed an initiative which is rare in the dealings of cities with public utilities.

(3) Only three executive offices are made elective by statute: the mayor, treasurer, and clerk. In addition, the civil service commission, election commissioners, board of local improvements, school board and library board are provided by statute. The General Act bestowed upon the city council the power by a two-third vote to create or discontinue certain specified offices "and such other offices as may by said council be deemed necessary or expedient." They may be filled either by popular election or by appointment by the mayor, as the council may determine. As mentioned above, almost the entire administrative organization of Chicago rests, therefore, not on statute, but on ordinance.

Executive Departments.—The executive departments of the city government now number more than 25 (1913). The heads of all of them, except the election commissioners, are appointed by the mayor with the consent of the council—which is never refused. The most important are: the finance department; the department of public works; the police department; the fire department; the health department; the law department; the building department; the department of electricity (operating a municipal electric light plant); and the department of supplies. There are also: a board of local improvements (appointed by the mayor), the authorization of which is necessary before the council may order street improvements, and which supervises the special assessment system by which such work is paid for; a civil service commission, similarly appointed, which administers a merit system exceptionally broad and stringent in its terms; and a board of election commissioners appointed by the county judge, which divides the city into precincts, appoints election officials and supervises the preparation of ballots and the conduct of elections.

Courts.—There was established in 1906, in place of the then thoroughly disreputable justice court system, a municipal court, with both civil and criminal jurisdiction, composed now of 30 judges elected for a six-year term, one-third retiring every two years. Elections occur with the regular national, state and county elections in the fall, and the candidates are nominated in party primaries and placed on the ballot in party columns. The notable features of the court are its code of procedure—a somewhat radical experiment in the direction of simplicity, dispatch and cheapness; and its centralized administrative organization, by which, under the presidency of a chief justice, the work of all the judges is subjected to a common supervision.

Local Boards and Commissions.—This completes the description of the city government proper; but of the total local government of Chicago, the city corporate is only a part. The crux of the municipal system is the multiplicity of local governing bodies. There are performing various local functions within the area of Chicago beside the city proper: Cook County, the Sanitary District of Chicago, three great park districts covering most of the city (the South Park, West Park and Lincoln Park

districts) two small park districts, the Board of Education and the Library Board. The county, although more than ninety per cent, both of its population and its assessed valuation are within the city, is, governmentally, entirely distinct; and the city's representation on the county board is constitutionally fixed at two-thirds. The county administers justice, charities, the assessment, collection of taxes, and the election system. The Sanitary District includes all of Chicago, and a small amount of territory outside. It is a municipal corporation for the purpose of constructing and managing the drainage canal, the primary purpose of which is the disposal of city sewage and the protection of the city's water supply. It is governed by nine trustees elected by popular vote. The Lincoln Park and West Park boards are appointed by the governor; the South Park board is appointed by the judges of the circuit court of Cook County. They have entire control of the laying out, improvement and maintenance of parks and boulevards in their respective areas.

The board of education is composed of twenty-one members appointed by the mayor, but with their appointment the control of the city over them stops. There is no general power of removal. The library board, of nine members, is appointed in the same way as the school board, and bears the same relation to the city.

Taxation.—The results of this multiplicity of governing authorities are most important in relation to the tax situation. Each governing body is assigned by law a separate tax rate, with no provision for common control or mutual adaptation. The county is granted a taxing power not exceeding seventy-five cents on the $100.00. The city corporate may levy not more than $2.00 per $100.00, and a tax of ten cents for a tuberculosis sanitarium. The board of education is entitled to $2.50 for educational purposes and $2.50 for buildings; the library may levy ten cents; the South Park Board, forty cents plus $300,000; the West Park Board, $1.25; Lincoln Park Board has no legal limit. The Sanitary District is entitled to seventy-five cents. To most of these may be added a tax for bond interest and sinking fund.

All these separate tax rates are certified to the county clerk, whose duty it is to extend them and make out the collector's warrants. This is done upon the basis of an assessment made originally by a county board of assessors, elected by popular vote, corrected and equalized between towns by a county board of review, also popularly elected, and finally equalized between counties by the state board of equalization. The state board also adds an original assessment of railroad property and of capital stock of corporations. There is no budgetary union of the various local governments; no provision for common consideration or mutual adaptation of their several demands. The only control is in the limitation by the legislature of the particular tax rate, and the ministerial action of the county clerk in scaling down the various tax levies under the provisions of the "Juul Law," a state statute intended to supplement the separate limitations by fixing a complicated and variable maximum which all taxing bodies together shall not exceed. Under this process, a piece of property in the business district was, in 1910, taxed as follows:

	Per $100.00	Portion of Each $100 Paid in Taxes
State tax	$ .30	$ 6.46
County tax	.53	11.42
City corporate	1.3226	28.50
Tuberculosis sanitarium	.05	1.08
Public library	.0374	.81
Schools { educational	1.1205 }	33.41
Schools { buildings	.4295 }	
Parks	.51	10.99
Sanitary District	.34	7.33
	$4.64	$100.00

These rates apply to the assessed valuation, which is, according to law one-third of the true value. In various parts of the city the total tax rate ranged from $4.13 to $5.01 per $100.00 assessed valuation. The census bureau reported in 1908 that the under valuation was about one-fourth. If the proportion is still true, the tax rate was, in 1910, $11.85 per $1,000.00 full cash value. The per capita taxation for all purposes in Chicago was in the same year $18.37.

Other Revenue.—The city corporate raises less than half of its ordinary revenue by direct taxation. In 1910, the income from taxes was $9,584,008.34 and from miscellaneous sources $11,435,363.10, of which the largest item was $6,864,960.00 from saloon licenses.

See Alderman; Boards, Municipal; Charters, Municipal; City Planning; City and the State; Cities, Classification of; Council, Municipal; Legislation and Legislative Problems in Cities; Mayor and Executive Power in American Cities; Municipal Government in the United States; Officers in City Government; Ordinances, Municipal; Parks; Police; Street Commissioners; Streets.

References: S. E. Sparling, *Municipal Hist. and Present Organization of Chicago* (1898); E. J. James, *The Charters of Chicago* (1898); E. J. Brundage, Codifier, *The Chicago Code of 1911*; D. F. Wilcox, *Great Cities in Am.* (1910), ch. iv, *Municipal Franchises* (1911); "Cities and Villages" in *Hurd's Revised Statutes of Illinois* (1912); C. E. Merriam, *Report on Municipal Revenues of Chicago* (1907); *Chicago City Manual* (annual).

F. D. Bramhall.

CHIEF JUSTICES. Practically all the highest courts—national, state, or territorial, in-

cluding the District of Columbia—are presided over by a judge called chief justice. He usually has a little more salary than the other judges; presides at sessions of the court; distributes cases for consideration by particular judges; and performs some administrative functions for the court. He has, in decisions, exactly the same voice as any of the other judges; but in the Federal Government he presides over the Senate in the impeachment trials of the President and also appoints the marshal of the Supreme Court. The chief justices are sometimes ex-efficio members of boards and commissions.

The chief justices of the United States, since the adoption of the Federal Constitution, have been as follows:

1. John Jay (Sept. 26, 1789–1795), previously Secretary of Foreign Affairs; resigned; reappointed 1801 and confirmed December 19, 1801, but declined office.
John Rutledge (Dec. 15, 1795), Associate Justice from 1789 to 1791; appointed and sat but not confirmed.
William Cushing (Jan. 27, 1796), offered promotion from Associate but declined.
2. Oliver Ellsworth (March 4, 1796–1799), previously judge of the superior court of Connecticut; resigned.
3. John Marshall (Jan. 20, 1801–1835), previously Secretary of State; died in office.
4. Roger B. Taney (Dec. 28, 1835–1864), previously Secretary of the Treasury; died in office.
5. Salmon P. Chase (Dec. 6, 1864–1873), previously Secretary of the Treasury; died in office.
6. Morrison R. Waite (Jan. 21, 1874–1888), previously a lawyer; died in office.
7. Melville W. Fuller (July 20, 1888–1910), previously a lawyer; died in office.
8. Edward D. White (Dec. 12, 1910), previously Associate Justice.

See Courts, Federal; Supreme Court of the United States; chief justices by name.

References: H. E. Carson, *Hist. of the Supreme Court of the U. S.* (1891); W. W. Willoughby, *Supreme Court* (1890); H. Flanders, *Lives of the Chief Justices* (1858); G. Van Santvoord, *Sketches of Lives of the Chief Justices* (2d ed., 1882); biographies of the individual chief justices.

Albert Bushnell Hart.

CHILD LABOR

Need of Legislation.—The need for the regulation of the labor of young children is generally recognized; on the one hand, for the protection of children, who are often required to labor beyond their strength and are deprived of proper education and recreation in order to earn money for thoughtless or avaricious parents or other persons who may have control of the child; and, on the other hand, in order that it may not be used unfairly to depreciate the wages of adults and thus to depress the wages of heads of families below the proper standards for a "living wage."

The first child labor law in the United States was passed by the legislature of the state of Massachusetts in the year 1836. In 1904 the National Child Labor Committee was organized to promote proper legislation along this line, and it has conducted a campaign covering the United States.

When this committee was established, in 1904, it found that young children were employed in many industries; that the volume of child employment was increasing much more rapidly than the population; that child labor was defended by many good people on the ground that labor was a blessing and a duty to the child. Many states had no laws whatever regulating the employment of children; other states had rudimentary laws with no means of enforcement; while still others had fairly good laws but no public sentiment existed to sustain them.

The committee found that in less than ten states was there anything like an adequate method of meeting the increasing problem of child labor comparable to systems long since established in such European countries as England, Germany, France, Holland, Norway and Sweden; America was apparently plunging headlong into a policy of child exploitation, following closely in outline but exceeding in volume that of these older countries. The committee found that many children were employed in hazardous occupations resulting in numerous accidents, causing disability and death. The committee agreed substantially to the following: The youth is less cautious than the adult, therefore more susceptible to unusual dangers; information gathered through many years in older industrial civilizations demonstrates the excessive hazard to which working children are exposed; reports from the few commonwealths in America which offer a basis for computation corroborate this testimony; popular rumor indicates that scarcely a day passes without the sacrifice of some little child worker to the ranks of the crippled or to an untimely death. The committee therefore determined to undertake "the task of arousing public interest and securing legislation against this sacrifice, on the assumption that children under sixteen years are unsafe industrial risks and that child labor in certain specific dangerous occupations may without injury to society be suspended."

The committee undertook a campaign against the night employment of all children under sixteen years of age on the ground that such employment involves extraordinary risks of ill health, accident, and moral contamination. The committee also opposed the employment of minors as night messengers on the ground of the extraordinary temptation and exposure

incident to such employment and the committee has been the means of securing the adoption of laws in several states prohibiting such night messenger service. The following is a statement of changes in state laws since the organization of the national committee and the beginning of systematic agitation.

Analysis of System, 1904–1912.—(1) During the eight years after the National Committee was organized, six states passed their first law upon this subject: Delaware, Florida, Georgia, Mississippi, New Mexico, Oklahoma, and the District of Columbia.

(2) The eight-hour day has been established in Arizona, California, Colorado, Illinois, Indiana, Mississippi, Missouri, Ohio, Kansas, Nebraska, New York, North Dakota, Oklahoma, Washington, Wisconsin, and the District of Columbia.

(3) Night work of children under 16 years has been made illegal in Alabama, Arizona, California, Colorado, Delaware, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, Oklahoma, Rhode Island, South Carolina, Vermont, Washington, Wisconsin, and the District of Columbia.

(4) Night messenger service has been forbidden to persons under 21 in New York, Nevada, Massachusetts, Rhode Island, Wisconsin, Utah, and New Jersey; and under 18 in Michigan, New Hampshire, Oregon, Tennessee, California, and New Jersey (cities under first class).

(5) A 14 year age limit as the minimum for employment in industry has been established in the following states: California, Colorado, Delaware, Idaho, Iowa, Kentucky, Louisiana, Maine, Missouri, Nebraska, Pennsylvania, North Dakota, New Jersey, Tennessee, West Virginia, Rhode Island, Kansas, Arizona, Maryland, and the District of Columbia.

(6) Methods of proving the age of children seeking employment have been provided in the following: Arizona, California, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Nebraska, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Washington, Wisconsin, and the District of Columbia.

Incompleteness of Legislation.—(1) Six states have not yet reached the 14 year age limit, even for the employment in factories: North Carolina, Alabama, Florida, Georgia, Mississippi, South Carolina.

(2) Alabama, Florida, North Carolina, North Dakota, South Carolina, and Virginia permit the employment of boys of 12 years in mines.

(3) Children under 16 are permitted to work at night in Colorado, Connecticut, Maine, Maryland, Montana, Nevada, New Hampshire, South Dakota, Tennessee, Utah, West Virginia, and Wyoming.

(4) There are 23 states in the Union in which children under 16 may work more than 8 hours a day.

(5) The 17 states in which no real proof of age is required are: Alabama, Arkansas, Delaware, Florida, Georgia, Idaho, Indiana, Mississippi, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and Wyoming.

(6) Arkansas, Florida, Georgia, Nevada, North Carolina, Utah, and Wyoming have no department entrusted with the enforcing of laws; the factory inspector in Missouri has jurisdiction only in the large cities; in Louisiana only in the parish of New Orleans; and in Alabama is required to visit jails and almshouses also.

Desiderata.—The National Child Labor Committee has laid out the following "working program" which it considers to embody the minimum standard which should be adopted:

(1) That no child under fourteen years of age can wisely be subjected to wage earning occupations.

(2) That no child between fourteen and sixteen years of age shall be employed at night or for a longer period than eight hours a day, nor in an occupation known to be dangerous to life, health, or morals.

(3) That no such child shall be employed unless satisfactory evidence is given that he has a normal physical development.

(4) That before employment he shall have been given an opportunity to lay at least the foundations of an American education.

(5) That children above fourteen and under twenty-one years of age shall be guaranteed by suitable laws against specific employments under circumstances that would menace the welfare of society, the restrictions to be graded according to the degree of hazard involved.

(6) Efforts must also be made to secure suitable compulsory school laws in harmony with child labor laws to guarantee against truancy and idleness.

National Uniformity.—On August 26, 1911, a draft of a uniform child labor law, prepared by the National Child Labor Committee, was adopted by the Commission on Uniform Laws of the American Bar Association, for recommendation to the different states.

Child labor laws are necessarily closely involved with the compulsory education (*see* EDUCATION, COMPULSORY) laws intended to secure children against the loss of educational opportunities. It necessarily follows that legislation must be adopted to secure educational privileges.

The most efficient compulsory education laws follow the line laid down by the legislature of Illinois. Under the Illinois law children desiring to take employment must secure from the school authorities an "age and school certificate" showing that the child is above the age of fourteen years and that he has passed

certain required standards of intellectual training. Under this law the principals of public schools, the truant officers and the state factory inspectors become coöperating agents for the protection and education of the child.

The passage of a National Children's Bureau Bill by Congress in 1912 was due directly to the active and persistent efforts of the National Child Labor Committee. The Children's Bureau Bill affects, not only the interests of children employed in industries, but also the interests of dependent, neglected, delinquent, and defective children generally.

The question of child labor is becoming more and more a live issue in the United States. It is being discussed in women's clubs, religious organizations, schools, and colleges. Local committees are being formed to combat the evil in their own communities. Child labor reform is made one of the planks in platforms of political parties. The United States is beginning to demand an end to the exploitation of her children.

See BUSINESS, GOVERNMENT RESTRICTION OF; CHILDREN, DEPENDENT, PUBLIC CARE OF; LABOR, PROTECTION TO; LABOR, WOMEN'S.

References: Great Britain Royal Commission on the Poor Laws and Relief of Distress, *Report on Boy Labor*, 1909; F. Keeling, *Labor Exchange in Relation to Boy and Girl Labor* (1910); *Child Labor Bulletin* (June, 1912, to date); Library of Congress, *List of Books Relating to Child Labor* (1906); Am. Assoc. for Labor Legislation, *Publications* (1910 to date); E. G. Murphy, *Problems of the Present South* (1905); Chicago City Club Committee on Public Education, *Report on Vocational Training in Chicago and Other Cities*, 1912; Woman's Municipal League, Boston, Mass., *Charts on Organized Opportunities for the Physically Handicapped* (1911); U. S. Dept. of Commerce and Labor, "Report on Condition of Women and Child Wage Earners in the U. S." in *Sen. Doc.*, 61 Cong., 2 Sess., No. 645 (1910); U. S. Bureau of the Census, *Child Labor in the U. S.* (1907); J. Spargo, *Bitter Cry of the Children* (1906); F. Scott, *Child Labor Laws* (1910); M. E. Sadler, *Continuation Schools in England and Elsewhere* (1910); Am. Acad. of Pol. Sci., *Economic Position of Women* (1910); National Child Labor Committee, *Annual Proceedings* (1905 to date); Margaret MacMillan, *Labor and Childhood* (1907); J. Goldmark, *Child Labor Legislation* (1907); Great Britain Departmental Committee on the Employment of Children Act, *Report*, 1909; Am. Acad. Pol. Soc. Sci., *Annals*, Supplement (Mar., 1909), Supplement (Mar., 1910); *Am. Year Book, 1910, ibid, 1911*, and year by year; Meyer Bloomfield, *Vocational Guidance of Youth* (1911); A. T. Fald, "Child Labor Policy of New Jersey" in Am. Economic Assoc., *Proceedings*, Oct., 1910; Natl. Child Labor Commission. *Uniform Labor Laws* (1911).

HASTINGS H. HART.

CHILDREN, DEPENDENT, PUBLIC CARE OF

Children under public care may be provided for by agents of the commonwealth or any of its subdivisions, as counties, cities, townships, etc., or they may be cared for by a co-partnership between a governmental agency and a private institution or individual. For example, in the state of New York, dependent children who are public wards are cared for in private institutions which are reimbursed from the public treasury; in the state of Pennsylvania by private children's aid societies which board them out in private families, and the societies are reimbursed from county treasuries.

Legal Custody.—The question whether a child is to be received and cared for as a public ward may be determined in different ways. Under the laws of the state of Illinois, if a child which has been abandoned by its parents comes into the custody of any institution, whether incorporated or not, organized for the care of dependent and neglected children, the institution thereby acquires the legal control of the child with the right to dispose of it by adoption or otherwise, and the statute provides that the voluntary leaving of a child in an institution by a parent, shall constitute abandonment without any written release or court proceeding. But the supreme court of the state of Illinois has decided that even in case of abandonment the legal rights of the parent cannot be canceled without notice to the parent and a proper court proceeding. In some states provision is made by law for notice by publication to parents whose whereabouts cannot be ascertained.

The overseers of the poor have authority, in some states, to indenture or otherwise dispose of the children of paupers, without legal proceedings. In most states of the Union the right of the parents to dispose of a child to a third party by a simple release is recognized. In the case of illegitimate children this right generally resides with the mother. In most states the law provides that a child abandoned or neglected by its parents may be disposed of by a competent court. The probate court has authority, in many states, to adjudicate the cases of orphan, dependent, neglected and abandoned children. Within the past twelve years laws have been passed in many states assigning this duty to a juvenile court. It

is maintained by some that the legal guardianship of a child ought never to be changed without adjudication in court, and that the powers of the chancery courts should be extended to cover all children who are without faithful, competent and responsible guardians.

State Homes.—Formerly orphan, dependent and neglected children were cared for almost entirely by private orphan asylums and child-helping societies. However as early as 1712 the colony of Massachusetts passed laws authorizing the indenturing of homeless boys by township overseers, and as early as 1723 the city of Charleston, S. C. established a public orphanage maintained by public funds.

Notwithstanding the fact that the Civil War closed in 1865, state soldiers' orphans' homes for the care of children of soldiers of the War of the Rebellion are still maintained by the states of Maine, Pennsylvania, Ohio, Indiana, Illinois, Iowa and Kansas. These institutions are in reality free boarding schools for the children, in some cases the grandchildren, of old soldiers (*see* SOLDIERS' ORPHANS).

State schools or homes for dependent children are maintained by the states of Rhode Island, Michigan, Wisconsin, Minnesota, Colorado, Montana and Oklahoma. Most of these homes are intended for the temporary care of children awaiting placement in family homes. (*See* CHILDREN, DEPENDENT, STATE SCHOOLS FOR).

County Homes.—The system of county homes for dependent children was first adopted in Ohio in 1866, and about forty-five county homes have been established in that state. The system was adopted later by Indiana, where about fifty county children's homes were established, of which ten or twelve have been closed since 1900. A few county children's homes exist in other states, for example, Illinois and Pennsylvania. The county homes are under the control of county commissioners, county boards of trustees, or county boards of children's guardians. In some cases the county home is owned by a private corporation and supported by the county.

Under the Ohio law it is made the duty of the trustees to place their wards early in family homes, but in practice the children have remained until about the age of sixteen. In Indiana the state Board of Charities has authority to place out children from the county homes, and, as a consequence, the population of the county homes has been greatly reduced. The county home system was organized to secure the removal of children from almshouses, but it has not met the expectation of its founders and has not extended much beyond the borders of Ohio and Indiana.

Subsidized Homes.—In a number of states, private institutions for the care of dependent children receive grants from the public treasury to assist in the maintenance of the children (*see* SUBSIDIES TO PRIVATE INSTITUTIONS).

State Care Outside of Institutions.—There is a growing sentiment in favor of placing dependent children in family homes rather than bringing them up in institutions. The state of Massachusetts established a placing-out agency as a department of the state Board of Charity in 1868, first for the oversight and protection of boys placed in families on indenture; later it was extended to include the boarding of infants and older dependent children in family homes. Because of an excessive rate of mortality among infants committed to the state almshouses, provision was made for boarding infants in family homes. Still later it was decided to close up altogether the State Home for Dependent Children at Monson, and to substitute family home care, under the guardianship of the state Board of Charity. The state also maintains placing-out agencies in connection with the Girls' Industrial School at Lancaster, and the Lyman School for Boys at Westboro. Altogether the state has under its care some 4,000 children in family homes, of whom about one-half are boarded out at the expense of the state; and about half are in "free homes," where their maintenance is provided by the foster-parents. Massachusetts expends about $400,000 per year in receiving, placing, boarding, clothing, schooling and supervising these children, and has, probably, the largest placing-out agency in the world.

The state of New Jersey has a law providing for a state Board of Children's Guardians, and under this law all children who come under public guardianship in the state of New Jersey are made wards of the Board of Children's Guardians, which has authority to board out children or to place them in free homes at their discretion.

The District of Columbia has a Board of Children's Guardians whose functions are similar to those of the New Jersey Board of Children's Guardians. It is responsible for all children who are public wards in the District of Columbia, and has a supervision over all private institutions for children.

In the state of Indiana the state Board of Charities has authority to place children in family homes from the county children's homes. It has also the duty of visiting all children placed in family homes by any agency in Indiana, and it may order the removal of children from such family homes at its discretion. In New York, Illinois, Indiana, Wisconsin and California the state boards of charities or state boards of control have authority to oversee the work of private institutions and to visit and supervise children placed in family homes by such organizations. Laws providing for such supervision were at first opposed by some of the private institutions; but as the plan came to be tested, the opposition gradually disappeared, and it is generally accepted cheerfully by the private institutions which are subject to inspection. In fact, some institu-

tions which were not legally subject to this supervision have voluntarily requested it.

County Agencies for Placing in Family Homes.—In many states county commissioners, directors of the poor or superintendents of the poor have authority to indenture children or to place them otherwise in family homes. In a number of counties in the state of Indiana there have been established by law county boards of children's guardians, whose special duty it is to look after the interests of dependent and neglected children. This plan is highly regarded in Indiana, but it has not extended into other states. In Michigan there is a system of county agents appointed by the state Board of Charities and Corrections, with authority to place children in family homes and to watch over those already placed. In some states there are county boards of visitors or county boards of charities, to whom is assigned by law the duty of visiting and watching over children placed by the juvenile court or by other children's agencies.

Summary.—Below is a summary of the benevolent institutions for children in 1904:

Total Number of Institutions	1,075
Public	119
Private	478
Ecclesiastical	478
Total Number of Inmates, Dec. 31, 1904	[1] 92,289
Male	50,884
Female	41,286
Number of Inmates per 100,000 of Population	112.6
Annual Subsidies from Public Funds, 1903	$ 2,181,784
Income from Pay Inmates	1,033,593
Cost of Maintenance	10,050,587

[1] Includes 119 not reported by sex.

See CHARITIES, PUBLIC AGENCIES FOR; CHILD LABOR; CRUELTY TO CHILDREN; COURT, JUVENILE; EDUCATION AS A FUNCTION OF GOVERNMENT; PLAYGROUNDS; PUBLIC MORALS, CARE FOR; REFORMATORIES; SCHOOL HYGIENE; SCHOOLS, INDUSTRIAL.

References: Child Conference for Research and Welfare, *Proceedings* (1909, 1910); Chicago Child Welfare Exhibit, *Child and City* (1911); H. H. Hart, *Cottage and Congregate Institutions* (1910), *Preventive Treatment of Neglected Children* (1910); Institutions for Dependent Children, *Annual Reports;* Margaret Alden, *Child Life and Labor* (1908); Homer Folks, *The Care of Destitute, Neglected and Delinquent Children* (1902); *Am. Year Book, 1910, ibid, 1911,* and year by year; C. L. Brace, *The Dangerous Classes of New York* (1872); E. C. Wines, *State of Prisons and Child-Saving Institutions* (1880); U. S. Bureau of the Census, *Benevolent Institutions* (1904); Nat. Conf. of Char. and Corrections, *Proceedings* (1874 to date); R. R. Reeder, *How Two Hundred Children Live and Learn* (1910); White House Conference on the Care of Dependent Children, *Proceedings,* 1909; Nat. Conf. of Char. and Corrections, *Report of Committee on History of Child Saving Work in the U. S.,* 1893; Internat. Cong. of Char., *Report on Care of Dependent, Neglected and Wayward Children,* 1893; G. B. Mangold, *Child Problems* (1910); M. P. E. Groszmann, *Career of the Child* (1911); The Hotchkiss Committee, *Report on the Juvenile Court of Cook County, Illinois,* 1912; Leon Lallemand, *Histoire des enfants abandonnés et delaissés* (1885); R. C. McCrea, *Humane Movement* (1910).

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CHILDREN, DEPENDENT, STATE SCHOOLS FOR. The state of Massachusetts established early a state school for dependent children at Monson, which was closed about 1896, being superseded by the placing-out system. A "State Public School" for dependent children in Michigan was established in 1876, designed to afford a temporary refuge for dependent children until they could be placed permanently in family homes. The Michigan school originally had a capacity of 300 children but for many years its population has been about 200. State public schools on a similar plan were established later in Minnesota, Wisconsin, Colorado and Rhode Island. In most of those states it is required that dependent children who become a public charge shall be committed to the state school, and from one to five agents are employed to place such children in family homes and maintain a friendly watch-guard and supervision over them after they are placed. The stay of children in the state public school is comparatively brief—usually six months to a year. The state public schools of Michigan and Wisconsin receive a limited number of crippled children. The plan of state schools for dependent children is generally popular in the states where they are located. See CHILD LABOR; CHILDREN, DEPENDENT, PUBLIC CARE OF; EDUCATION AS A FUNCTION OF GOVERNMENT. **References:** Wisconsin State Public School, Sparta, Wis., *Biennial Reports* (1888 to date); Minnesota State Public School, Owatonna, Minn., *Biennial Reports* (1886 to date); Michigan State Public School, Coldwater, Mich., *Biennial Reports* (1878 to date); Colorado State Home for Dependent and Neglected Children, Denver, *Biennial Reports* (1898 to date); H. H. Hart, *Preventive Treatment of Neglected Children* (1910), *Cottage and Congregate Institutions* (1910); *Am. Year Book, 1911,* and year by year; Homer Folks, *The Care of Destitute, Neglected and Delinquent Children* (1902).

H. H. H.

CHILDREN'S BUREAU. In 1912 a bill providing for the establishment of a Children's Bureau in the Department of Commerce and Labor was passed by Congress and approved by the President (April 9, 1912). By the act of Mar. 4, 1913, the bureau was transferred to the new Department of Labor. Its business is to investigate and report on matters pertaining to the welfare of children and child life among all classes of people and to in-

vestigate the questions of infant mortality, the birth rate, orphanage, juvenile courts, desertion, dangerous occupations, accidents and diseases of children, employment, legislation affecting children in the several states and territories. A chief is appointed by the President and an assistant chief appointed by the Secretary of Labor. The President appointed as the first chief of the bureau, Miss Julia C. Lathrop. See CHILD LABOR; CHILDREN, DEPENDENT, PUBLIC CARE OF; LABOR, RELATION OF THE STATE TO; SOCIAL REFORM PROBLEMS. **Reference:** U. S. Dept. of Labor, *Annual Reports.* A. C. McL.

CHILE. Chile was explored and conquered by lieutenants of Pizarro going south from Peru, between 1530 and 1540. It belonged to the vice-royalty of Peru until independence of Spain was declared in 1810. Geographically, Chile is situated over 38 degrees of latitude, from 17° 57′ to 55° 59′ south, with a width averaging only 90 miles. The area is 291,500 square miles, with a population of about 3,500,000 or 12 to the square mile.

The present constitution was adopted in 1833, and provides for a central republican form of government with political subdivisions into twenty-three provinces and a national territory. The provinces are governed by *intendentes* appointed by the President, local officials being elected by direct popular vote. The legislative body is composed of a senate and a chamber of deputies. Senators are elected by direct accumulative vote, in the proportion of one for every three deputies, for six-year terms, partially renewed every three years. Deputies are elected by direct vote, one for every 30,000 inhabitants, for three-year terms. During recess of congress a standing committee of seven senators and seven deputies act for congress. The executive is a President chosen by electors, elected by direct vote, for a term of five years, and cannot immediately succeed himself. There is no vice-president, but the secretary of the interior is the substitute. There is a council of state consisting of six appointees of congress and five of the President, directly responsible to congress. A Cabinet appointed by him, assists the President; in it are six ministers: interior; foreign affairs; justice and public instruction; finance; war and marine; industry and public works. The judiciary is a national Supreme Court of ten members convening at Santiago, appointed by the President; six courts of appeal and minor courts in the provinces.

The army consists altogether of about 17,500 men in active service. The navy has more than 30 vessels of modern construction, and battle ships of the dreadnaught type are now under order. The personnel of the navy amounts to about 6,000 men. The war strength of the republic, both army and navy, is estimated at 150,000 men. The railway is operated largely as a government function. Education in Chile is free but not completely compulsory; it is a national institution, uniform throughout the country, with secondary instruction in higher schools, and a national university and special schools for technical training. The capital is Santiago. The state religion is Roman Catholic. **Reference:** J. I. Rodriguez, *Am. Constitutions* (1903), II, 203-252; Pan American Union, *Bulletin.* ALBERT HALE.

CHINA, DIPLOMATIC RELATIONS WITH

(1784–1841).—Foreign over-sea commerce with China from about 1670 on, was relegated to the single port of Canton, where a few European states, with England in the lead, operated through chartered companies dealing with a group of Chinese firms called the "Cohong." Intercourse between the United States and China began in 1784, when Samuel Shaw, supercargo of the *Empress of India* (later first consul) brought a cargo from New York to Canton. Commerce continued for more than half a century with no other official supervision than the appointment of an American citizen trading in Canton as consul, without salary or perquisites, and never recognized by the Chinese Government as an accredited representative. Conditions there resembled those of mediæval Europe before the rise of international law, when foreigners abroad secured asylum in their "factories" chiefly because of a mutual desire to preserve a profitable exchange of commodities. American merchants in this adventure, while enjoying greater freedom from control than their competitors who were servants of corporations, had to accept the risks of interference and oppression by native authorities that were to be expected in barbarous lands. As China refused to concede a political status to outlanders in her territory, America acted consistently during this period in letting her nationals there encounter the hazards of trade and residence with their own resources.

(1842–1858).—Upon the conclusion of the opium war in 1842, Admiral Kearny, in command of an American squadron in Canton, secured, through the Viceroy, the Imperial consent to allow his countrymen the advantages of the treaty of Nanking. This permission, based on the solidarity of foreign interests in China, is the beginning of the subsequent policy of placing all foreigners upon the same footing.

The treaty of Wanghia, negotiated in 1844, by Caleb Cushing and the Manchu Commissioner Kiyin, established American relations upon a diplomatic basis. It granted rights of trade and residence at five ports; the reception by Chinese officials of consuls on equal terms; communication through them with the Imperial Government; and the exemption of Americans from Chinese civil and criminal jurisdiction. This latter provision, like that of the most favored nation clause common to all her treaties, apparently seemed the easiest way of restraining "barbarians," by holding their consuls personally responsible for their conduct. Though surprised and defeated in war, China was too well satisfied with her own culture to suspect the existence of other states in the world equal to her own who would exploit this privilege; and hoped thus to keep foreigners from approaching closer to the capital.

International relations during the ensuing twelve years were conducted under a mere mask of friendship. Commissioners of the United States maintained their legations with what dignity they could in hired dwellings in Canton or Shanghai, without a single personal interview with Governor General Yeh, in charge of foreign affairs, and without success in two attempts to communicate directly with the Imperial Government. The recalcitrant policy of the court toward all foreign nations, and its evident determination not to carry out its treaty stipulations affecting commerce, led to a long series of annoyances culminating in the "Arrow affair" of 1857, which gave its name to the second war between Great Britain and China.

In this crisis the diplomatic attitude of the United States was one of some delicacy. America at the time had little interest in Asia, and on general principles adhered to a policy of non-interference. Its agents in China, however, were as fully convinced as their confrères from Europe of the necessity of compelling the court to abide by its compacts and to allow a fuller development of intercourse. When England and France joined in hostilities against the Empire, President Buchanan appointed Wm. B. Reed as plenipotentiary to China with instructions to coöperate with them by peaceful means and to demand the residence of a representative and direct diplomatic intercourse at Peking, the better regulation of commerce and a customs tariff, as well as religious freedom for Christians. The British were not unwilling to accept this moral support as well as that of Russia, which was offered on the same terms. After the capture of Canton and of the river approach to Peking, the four allies negotiated treaties of peace at Tientsin separately, but with a common understanding as to their terms.

The Opening of Peking (1859).—The chief contribution of the Reed treaty of 1858 was an acknowledgment of religious liberty obtained from China. Tariff changes were settled subsequently in Shanghai on the basis of a revision concluded by Great Britain. Of the indemnity of $735,000 received for actual losses, less than half was awarded to claimants, and Congress, in 1885, rather tardily voted the return of an unexpended balance to China. As the "residence" clause of the treaty provided for the visit of ministers to the capital, Reed's successor, John E. Ward, in June, 1859, tried with the Allies to reach Peking, by Taku. The Chinese resisted, and, after an attempt with insufficient forces to storm the forts at the mouth of the Peiho, Ward accepted an imperial escort to the capital from another port.

Here the ministers of state showed a desire to exhibit the American legation to the nation as a tribute-bearing embassy. Hence, while treating the envoy courteously as the guest of the sovereign, they declined to allow an audience with the Emperor without imposing the *kotow*, or obeisance before the throne. Ward, though anxious to carry out his instructions, quite properly refused an audience on these terms. After two weeks of arduous but friendly discussions, in which the high commissioners refused to yield, he delivered the President's letter to them without seeing the Emperor, and returned to the coast as he had come, exchanging ratifications before embarking. His firmness and his appreciation of the vital principle involved deserve credit, as does his equanimity amid surroundings that threatened to involve him in humiliation and even ruin.

The Burlingame Policy and the Mission of 1868 (1862–1870).—America had no share in the Anglo-French expedition of 1860 which avenged the disaster of Taku and obtained the establishment of permanent legations at the capital. To Anson Burlingame, her first minister to reside in Peking (1862–1867), is due the initiation of a new policy—the institution of forbearance for force in dealing with China. Coöperation between the powers represented there was relied upon to secure treaty rights and urge necessary reforms, without menaces and the seizure of territory. Burlingame's personal influence was so extraordinary as to both win the Chinese and keep his colleagues in line with this agreement for five years, thus materially helping to preserve the integrity of China during the concluding spasm of the Tai Ping revolt.

The impression he made upon the Chinese was emphatically shown when they invited him, upon learning of his resignation of his post, to become the head of a special embassy from China to the great powers. This mission, which left China for America early in 1868, was intended as an introduction to China's diplomatic relations through her own agents with the western world, and as a plea for time and patience in urging modern methods

and institutions for which her people were not prepared. Its reception in the United States was enthusiastic. Some premature hopes were raised by the optimistic speeches of its leader but, despite the ensuing reaction from these, the effect of the visit to America was wholesome and a more favorable estimate of China's culture and ambitions obtained. A treaty was negotiated with Secretary Seward in July, 1868, the most important provisions of which recognized China's equality among nations, allowed the right of free migration, and acknowledged the prerogative of the Emperor to order internal reforms unmolested by foreign pressure.

Antagonism against Chinese labor in California made this treaty unpopular shortly after its conclusion and stimulated repeated efforts to secure its abrogation and the exclusion from America of all Chinese immigrants. In England, Burlingame obtained from Lord Clarendon a remarkable endorsement of his policy in an order to British agents in China to refrain from further acts of coercion and reprisal. The mission was favorably received in several capitals of Europe, but with the sudden death of its chief in St. Petersburg, February, 1870, its work was ended. With Burlingame's premature removal passed the most important formative influence exerted by any American upon the political affairs of China.

The "Yellow Peril" Period (1871–1898).—Resident Chinese ministers were first assigned to the great powers in 1876, but little diplomatic business of importance was entrusted to those in Washington for several years. Fears of being overwhelmed by Chinese laborers for a time filled the hearts of Americans. After some attempts to exclude Chinese by legislation, objections to the immigration clauses in the Burlingame treaty impelled the dispatch in 1880 of a commission headed by J. B. Angell, who negotiated in Peking a treaty (1881) conferring on the United States the power to regulate, limit or suspend the immigration of Chinese laborers to this country. Further restrictions being demanded by the Pacific states, a third treaty was concluded in 1888 with the Chinese minister in Washington, but it was not ratified by China. A final compact, drawn up between Secretary Gresham and the Imperial minister in 1894, effectually stopped the coming of Chinese laborers to America, and made the return of those who ever left this country a matter of extreme difficulty.

In this year the United States was among the first to ignore China's claim to suzerainty over Korea and to treat envoys from that kingdom as representatives of an independent power. In the war between China and Japan an American, Gen. J. W. Foster, was engaged by China as counsel in the peace negotiations at Shimonoseki (1895), following a precedent established in 1879, when these nations arranged their dispute over the Lew Chew Islands by appealing to General Grant as arbitrator.

The Open Door Policy (1899–1910).—China's military weakness at the close of the century, when there seemed to be danger of her partition among European powers, induced Secretary Hay, in 1899, to recommend the agreement by these states to a policy of equal opportunity for commercial enterprise on the part of all the treaty nations dealing with that empire. This doctrine was extended, by the acceptance of his note of July 3, 1900, in the Boxer crisis, to their political action there—by which self-denying ordinance, a return to Burlingame's principle of coöperation and forbearance, China's autonomy may be said to have been saved. Though America, like the others, sent troops to rescue the beleaguered legations in Peking at that time, she refrained from employing them in punitive expeditions, and withdrew them as soon as the danger menacing her own citizens had passed. In the peace negotiations of 1901, Mr. Rockhill, the American special commissioner, exerted his influence on the side of humanity and justice, assisting in modifying the demands of the other powers and reducing the money indemnity at first imposed. In 1909 the United States remitted to China her share of the indemnity still unpaid, amounting to about $16,000,000, which the Chinese Government allocated, as the installments fall due, to defray the educational expenses of Chinese students in America.

In 1911 projects for buying up short lengths of railroad constructed by local capital and creating railroad systems built on foreign loans, precipitated a revolution, which began in the middle provinces and rapidly spread through most parts of the empire. This culminated in December, 1911, in the formation of a Chinese republic under the provisional presidency of Sun Yat Sen. After the election of Yuan Shih-kai to this office, Feb. 15, 1912, the Imperial Government disappeared and the privileged status of the Manchus was withdrawn. Thenceforth the Republic was the only government of China, and on May 2, 1913, the United States recognized the independence of the new Government. A combination of the bankers of six powers, England, France, Germany, Japan, Russia, and the United States, backed by the diplomatic representatives of each of the six Governments, was formed, however, for advancing money to the new Republic. For several months negotiations continued over the conditions of the loan, the six powers insisting on security and supervision of expenditure distasteful to China. On March 18, 1913, the United States announced her withdrawal from the Six-Power group.

See Asia, Diplomatic Relations with; Boxer Rising; Chinese Immigration and Exclusion; Commerce, International; Consular Service; Coolie Trade; Extraterri-

TORIALITY; GEARY LAW; IMMIGRATION; INTERVENTION; JAPAN, DIPLOMATIC RELATIONS WITH; MOST FAVORED NATION; NAVIGATION OF INTERNATIONAL RIVERS; NEGOTIATION OF TREATIES BY THE U. S.; PROTECTION OF CITIZENS ABROAD; RATIFICATION OF TREATIES BY THE U. S.; RECOGNITION OF NEW STATES; RUSSIA, DIPLOMATIC RELATIONS WITH.

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CHINESE IMMIGRATION AND EXCLUSION

Number and Distribution of Chinese.—Chinese began to come to the United States in considerable numbers in 1850. Attracted by gold discoveries and high wages, they were impelled from home by terror, famine and poverty attending the Tai Ping rebellion. Decennial census numbers were:

	1860	1870	1880	1890	1900
United States	34,933	63,199	105,465	107,475	90,167
California	34,933	49,277	75,132	72,472	45,753
Oregon	-----	3,380	9,510	9,540	10,397

Imminent restrictive legislation, which stimulated an inrush and a return of the then absent, explains the increase from 1880 to 1890. Early concentration in California resulted from arrival at San Francisco, high wages, want of transportation facilities, and sparse settlement of surrounding territory. Later diffusion is accounted for by the rise of anti-Chinese agitations in the Pacific states, increase of other Chinese than "laborers," and relative equalization of opportunities elsewhere. Conservative traditions and ties caused immigrants to return with their savings to China. Of the 300,000 aggregate arrivals up to 1882 about 200,000 had already returned.

Early Favor.—Early Chinese immigrants were favorably received, for the United States then sought equal intercourse with China. Scarcity of workers at manual labor, domestic and agricultural services resulted in California from the rush into mining and speculation, and the patient, obedient and industrious characteristics of the Chinese made them ideal "gap-fillers." They supplied labor to build Pacific railways, drain lands, cook and launder for persons more profitably employed. As miners, they worked poor or abandoned claims, rarely competing with white men. Legally, they occupied the same position as other immigrants though the treaties of 1844 and 1858 stipulated only for rights of residence, protection and trade for Americans in China. It was assumed that "no such stipulations were necessary to enable Chinese subjects to go to the United States, take up their residence and pursue any lawful business."

Causes of Anti-Chinese Sentiment.—Anti-Chinese sentiment early sprang up because of peculiar qualities and disabilities of the Chinese under American political methods. California was in a disturbed condition; European adventurers of kindred stock united in the cry "California for Americans," and turned against Chinese forms of discrimination used to expel Spanish-Americans. Winter and dull seasons intensified the feeling in San Francisco where the unemployed found a grievance in Chinese thrift. A fall in wages resulted from declining gold production, growing population, and the arrival of unemployed from eastern states after the crisis of 1873. Though wages remained higher there than elsewhere, a displacement of white labor by Chinese was supposed to be at the bottom of the new conditions. Agitators and labor organizers exaggerated Chinese peculiarities; they did live cheaply, in crowded and unsanitary conditions; bought little; returned ultimately with large savings to China; lived in isolation, under native customs and organization; refused assimilation; were of inferior race, given to vices, crimes, degrading practices; came and worked under servile contracts, menacing American labor and institutions. Their patient endurance of discrimination and harsh treatment caused more aggressive races to despise their seeming cowardice. Their inability to vote or to become naturalized, their want of effective protection by a strong home government were vital disabilities. Having nothing to gain or fear from them, politicians seeking votes espoused the cause of "American labor," and political parties vied in supporting anti-Chinese measures to attract the doubtful vote of the Pacific states. Partisanship intensified anti-Chinese sentiment. Meanwhile the occupation of wider lands, the stress of economic competitions, changes in the quality of European immigrants and their congestion in cities, al-

tered the public attitude towards immigration, Agitation in eastern states to exclude alien contract laborers came alongside Pacific coast demands for Chinese exclusion.

Many Chinese borrowed funds for their voyage, and were assisted to lodgings and employment on arrival. The Pacific railways contracted in China with laborers to complete their lines. Most Chinese women came as prostitutes. Such facts inspired or supported the allegation that Chinese came under servile contracts, though credible authorities agree that there was little actual coolie trade to California.

Early National Measures (1862–1878).—Congress prohibited (1862, 1875) importing coolies, laborers under contract and prostitutes; also the building or equipment of ships to engage in the coolie trade. By the Burlingame Treaty (1868), both countries "cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects, respectively, from the one country to the other, for purposes of curiosity, of trade, or as permanent residents;" but "join in reprobating any other than an entirely voluntary emigration," and agreed to prohibit it. Each pledged to subjects of the other all privileges, immunities, and exemptions for travel or residence enjoyed by subjects of the most favored nation; provided "nothing herein contained shall be held to confer naturalization upon citizens" of either country in the other. In revising the naturalization laws (1870), the Senate declined to include Chinese among eligible persons, and a federal court later (1878) decided that a Chinaman could not be naturalized.

State Restrictions (1850–1879).—California and San Francisco enacted many laws and ordinances, often general in wording, against Chinese, such as foreign miners' license taxes; taxes on alien passengers; on laundries and fisheries of descriptions applicable to Chinese; prohibitions on Chinese testifying in court; on naturalization; on landing in California; anti-queue and air-space ordinances. When the federal courts disallowed such measures—as violating treaties or usurping federal power to regulate external commerce—California appealed for national legislation. Exigencies of politics caused political parties to favor restriction of Chinese immigration, and united the other Pacific states in support of California. Reports by state and national commissions evince neither thorough nor fair-minded investigation, but enunciated the usual charges against the Chinese, recommended treaty abrogation and restrictive legislation. Coincident outrages and "Kearnyism" (*see*) focused attention on California and her grievances. In 1879, California voted against Chinese immigration and adopted a constitutional provision authorizing the legislature to "regulate immigration of paupers, criminals, diseased persons and aliens otherwise dangerous or detrimental to the state, and to impose conditions of their residence or removal;" also forbidding employment of Mongolians by corporations or on public works.

Treaty of 1880.—Congress then voted in 1879 that no vessel might import at one time more than fifteen Chinese, but President Hayes vetoed the measure as violating the Burlingame treaty and needlessly forfeiting valuable rights acquired with difficulty in China. A special commission was then authorized to negotiate a modification of the treaty. The Chinese commissioners evinced familiarity with events culminating in the demand for treaty revision, but signed a treaty Nov. 17, 1880, embodying the main concessions asked. It provided that, whenever the coming of Chinese laborers might endanger the interests or good order of this country or any locality, the United States "may regulate, limit or suspend such coming or residence, but may not absolutely prohibit it." The limitation or suspension must be reasonable, and confined to laborers; other Chinese, also laborers already in the country must be free to go and come, enjoy all rights, privileges, immunities and exemptions accorded citizens of the most favored nation; the American Government must use every means to protect all Chinese in their rights, and immigrants must not be maltreated. During the negotiations, China refused assent to "prohibit" immigration, substituting "may not prohibit it;" but agreed that America might use its discretion, after assurance that such discretion would be used in "a friendly and judicious manner." "Laborers" should include artisans. "Limit or suspend" meant to fix the total number, the number admitted in one year, or to suspend immigration every alternate or third year, or for two, three or five years.

Act of 1882 and Amendment in 1884.—Congress forthwith passed a bill to suspend Chinese immigration for twenty years. President Arthur, recognizing that "present treaty relations spring from an antagonism which arose between our paramount domestic interests and our previous treaty relations," vetoed the act as a "breach of our national faith." He also doubted the validity of provisions requiring registration and passports. He approved the exclusion law (May 6, 1882) which suspended immigration of Chinese laborers for ten years, and ordered deportation of Chinese arriving, or found, unlawfully in the country. Departing Chinese must obtain certificates of identity if they wished to return. Others entitled to come must have certificates issued under authority of China. Naturalization was prohibited. An amending statute (July 5, 1884) forbade Chinese laborers to come from any foreign port; made certificates "the only evidence" of right to enter and required certifi-

cates not issued in America to contain specified information, and to be viséed by an American diplomatic representative. It excluded peddlers, hucksters, or persons connected with fisheries from privileges of the "merchant" class.

Second Treaty and Statute of 1888.—In 1885, many Chinese were murdered, wounded, or driven from their homes, and their property pillaged or destroyed at Rock Springs, Wyoming. Outrages against Chinese, elsewhere, continued, and the culprits were rarely punished. The administration of the laws worked hardship, and clogged the courts with litigation. China offered to coöperate in keeping her laborers out of the United States in exchange for effective protection of Chinese having recognized rights there. A new treaty was negotiated (March 12, 1888) which prohibited Chinese laborers from going or returning to the United States—except the return within one year of those who had in this country wife, child, parent, or property interests of $1,000. The treaty continued the former rights of exempt classes, and protection of person and property of Chinese and provided for indemnity for losses and injuries already suffered by Chinese. The Senate added amendments to nullify the certificates of those who had gone back to China.

Pending ratification, Congress enacted a law prohibiting the return of departed laborers, except those designated in the treaty; these must apply a month before departure, swear to all facts, and receive a certificate of identity as sole evidence of their right to return within a year to the port of departure only. Decisions by customs officers concerning right of Chinese to land were to be reviewable only by the Secretary of the Treasury. On complaint of any person, any Chinese might be arrested, and, if adjudged by a federal court commissioner unlawfully within the country, must be deported. Instead of ratifying the amended treaty, China proposed counter-amendments. Congress then enacted, and Cleveland signed, the Scott Law (Oct. 1, 1888) which prohibited henceforth the return of any Chinese laborer, nullified existing certificates of identity, and forbade future issue of certificates. The haste and extreme nature of these measures, and their violation of treaties, proceeded from a contest for the doubtful vote of the Pacific states. The Supreme Court decided that these laws were valid, because a statute may modify or terminate a treaty.

Geary Law; Treaty of 1894.—Until 1894, China refused by treaty to accept the legislation of 1888. Meanwhile, the basic law of 1882 approached its ten-year term. Complaints of illegal entry and increase in numbers and administrative difficulties continued. The anti-Chinese legislation culminated in the Geary Law (*see*) of 1892. By expert advice, the Chinese abstained from registration, pending a decision by the Supreme Court which upheld the validity of the law. Recognition that the Chinese acted in good faith and the impracticability of wholesale deportation caused the passage of the McCreary amendment (Nov. 3, 1893) which permitted registration within six months, substituted "one credible witness other than Chinese" for "one credible white witness," required a photograph on the certificate of identity, and defined "laborer," and "merchant." By the treaty of March 17, 1894 the Chinese Government agreed that for ten years immigration of laborers should be "absolutely prohibited," and accepted the main provisions of the abortive treaty of 1888. By a law of 1894, an adverse decision of immigration officials concerning the right of entry was made reviewable only by the Secretary of the Treasury. The Attorney General decided (1898) that only such Chinese as are expressly allowed are entitled to entry—apparently reversing the treaty principle applied to exempt classes. Flagrant abuses caused (1901) the prohibition of arrest of Chinese on complaint of others than federal officials. When Hawaii and the Philippines were annexed, the exclusion laws were extended to them.

Status from 1902 to 1913.—The prospective expiration of the Geary law moved Congress to reënact (1902) existing laws concerning Chinese exclusion and residence, to apply them to insular possessions, and to prohibit migration of Chinese between island groups or from islands to mainland. At the end of ten years, China terminated the treaty of 1894 whereupon Congress reënacted without term all existing laws. The State Department took the ground that the treaty of 1880 was thereby revived in which case the exclusion laws again conflicted with existing treaties. By acts of 1900 and 1903 the administration of Chinese immigrants was transferred from the Secretary of the Treasury to the Commissioner of Immigration in the Department of Commerce and Labor. Harsh interpretation and administration of the laws have occasioned hardly less complaint than drastic provisions and breach of treaties. Ready resourcefulness of the Chinese by cunning, perjury, and collusion to evade the law is the argument, but hardly justification, for this policy.

See Alien; Allegiance; China, Diplomatic Relations with; Citizenship in the United States; Comity, International and Interstate; Contract Labor Law; Domicile and Residence; Expatriation; Expulsion; Geary Law; Immigration; International Law, Influence of the United States on; Labor, Freedom of; Labor Organizations; Liberty, Legal Significance of; Most Favored Nation; Nationality; Pauper Labor; Police Power; Privileges and Immunities; States, Equality of.

References: M. R. Coolidge, *Chinese Immigration* (1909); J. B. Moore, *Digest of Int. Law* (1906), III, §§ 797–800, IV, §§ 567–578;

Lucile Eaves, *Hist. of California Labor Legislation* (1910), chs. iii, iv, v; J. W. Foster, *Am. Diplomacy in the Orient* (1903), chs. vii, viii; R. M. Smith, *Emigration and Immigration* (1890), ch. xi; P. F. Hall, *Immigration* (1908), Pt. IV; G. E. Seward, *Chinese Immigration* (1881); Am. Acad. of Pol. and Soc. Sci., *Annals*, XXXIV, No. 2 (Sept., 1909); F. D. Cloud, *Digest of Treaty, Laws and Regulations Governing the Admission of Chinese, etc.*, (1908); U. S. Industrial Commision, *Reports*, XV (1901), Pt. IV., *Sen. Docs.*, 57 Cong., 1 Sess., Nos. 106, 162, 4231; *Sen. Rep.*, 57 Cong., 1 Sess., No. 776; *Sen. Docs.*, 61 Cong., 2 Sess., No. 357; F. M. Malloy, *Treaties, Conventions, between United States and other Powers, 1776–1909*, I (1910), 196–291; R. E. Cowan, and B. Dunlap, *Bibliography of the Chinese Question in the U. S.* (1909); bibliography in Library of Congress, *Select List of References of the Chinese Question* (1904).

E. H. Vickers.

CHISHOLM vs. GEORGIA. Under the provisions of the Federal Constitution (Art. III, Sec. ii) that "the judicial power shall extend . . . to controversies . . . between a state and citizens of another state" and that "in all cases . . . . in which a state shall be a party, the Supreme Court shall have original jurisdiction," the plaintiff, a citizen of South Carolina, instituted this suit originally in the Supreme Court of the United States on a money claim against the state of Georgia (1793; 2 *Dallas* 419; 1 *L. Ed.* 440). On failure of the state to appear after service of process upon its officers, the court considered the question whether it had jurisdiction to determine the controversy and held (one judge dissenting) that although there was no statute authorizing such a proceeding and no means expressly provided for enforcing a judgment if one should be rendered against the state, nevertheless the court under its original jurisdiction had authority to try and determine the case; that "controversies between a state and citizens of another state" include cases in which a state may be defendant as well as those in which it may be plaintiff; and that coming into the Union under the Federal Constitution the state waives the objection that a sovereign state cannot be sued without its consent. Accordingly, judgment was entered against the state, but the writ to enforce it was never issued and after the adoption of the Eleventh Amendment (*see*) the case was stricken from the docket. See Cohens *vs.* Virginia; Courts, Federal; Courts and Unconstitutional Legislation; Eleventh Amendment; States as Parties to Suits; States in the Union.

McC.

CHOATE, JOSEPH HODGES. Joseph H. Choate (1832–) was born in Salem, Mass., January 24, 1832. He was admitted to the Massachusetts bar in 1855, and to the New York bar the following year, thenceforth practicing in New York. He joined the Republican party soon after its formation, and for some years rendered notable service as a campaign speaker. In 1870–71 he was a member of the committee of seventy that broke up the "Tweed Ring" in New York City. In 1894 he presided over the New York constitutional convention, and in 1897 was an unsuccessful candidate for the United States Senate. In 1899 he was appointed ambassador to Great Britain, an office which he filled with unusual acceptance and distinction until 1905. In 1907 he headed the American delegation to the International Peace Congress at The Hague. His legal practice won for him the admitted leadership of the American bar, one of his most notable victories being the case of Pollock *vs.* Farmers' Loan and Trust Co. (158 *U. S.* 601), in 1895, in which the income tax provision of the Wilson Tariff Act of 1894 was declared unconstitutional. His public addresses, a few of which have been published, place him in the front rank of American orators. See Great Britain, Diplomatic Relations with. References: W. A. Purrington, "Joseph H. Choate" in *Putnam's Monthly*, II (1907), 734–741; "Diplomacy and Mr. Choate" in *Saturday Rev.*, XCV (1903), 286–287.

W. MacD.

CHOSEN FREEHOLDERS. The county boards in New Jersey, known as boards of chosen freeholders, are similar in organization and functions to the boards of supervisors in New York. See County Government; Supervisors.

J. A. F.

CHRISTIAN SOCIALISM. This term has not yet acquired a definite meaning. To some it means merely such an interpretation of Christian dogma as will convert it into an argument for middle-of-the-road socialism. For example, one group of self-styled Christian socialists use the regular International Sunday School Lessons, and succeed in making every lesson convey a socialistic meaning. To others, it merely means the application of the teaching of Christ in our daily lives and has nothing whatever to do with government ownership. For example, it is agreed that if every one would regard his wealth as an instrument entrusted to him by society for service, it would make very little difference who owned the wealth. This is undoubtedly Christian but it is not socialism. All other Christian socialists come somewhere between these two extremes. See Fabian Socialists; Socialism; Socialism, State. References: R. J. Campbell, *Christianity and the Social Order* (1907); M. Kauffman, *Christian Socialism* (1888); C. W. Stubbs, *Charles Kingsley and the Christian Social Movement* (1904); P. W. Sprague, *Christian Socialism: What and Why* (1891).

T. N. Carver.

CHURCH AND STATE IN THE UNITED STATES

Federal Principle.—Church and state within the United States have always been separate, so far as the Federal Government is concerned. There is no obligation on the part of the Government to support the church and no right to interfere in its management; and no obligation on the part of the church to render any service to the Government or to consult it concerning ecclesiastical legislation or procedure. Each church, or religious body, whether Christian or non-Christian, has equal rights and privileges under the law, and for the Moslem mosque, or the Buddhist temple, or the Jewish synagogue, may be claimed the same freedom of worship, the same protection, and the same rights as the Christian churches enjoy. As formulated by Judge Cooley, the things forbidden to the Federal Government under the constitution, are: (1) any law respecting an establishment of religion; (2) compulsory support by taxation, or otherwise, of religious institutions; (3) compulsory attendance upon religious worship; (4) restraints upon the free exercise of religion, according to the dictates of the conscience; (5) restraints upon the expression of religious belief.

This principle of a free church in a free state appears in the Constitution in the prohibition of any "religious test as a qualification to any office or public trust under the United States" (Art. VI, ¶ 3) and more definitely in the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Colonies.—This new political idea had not been recognized in any of the foreign countries, from which this land was peopled; nor had it obtained in the colonies themselves, excepting Pennsylvania and Rhode Island. Indeed, the Reformed Church of Holland had been, and the Church of England and Congregational churches were, official churches, enjoying public support. The official Reformed Church of Holland was established in New Amsterdam, or New York, under the government of the West India Company, which provided for the support of its ministers. The Church of England succeeded to this preëminence after the English occupied New York, was the official church in Virginia from the beginning, and was also established in New Jersey, Maryland, the Carolinas and other southern colonies. The Congregational churches of New England, except in Rhode Island, were supported by the civil government of that section as "the standing order." There was more or less intolerance for non-established forms of faith in all the colonies, except Pennsylvania, where the Quaker idea of religious freedom prevailed, and Rhode Island, where the Baptists, who had been driven out of Massachusetts, refused either to seek public support for their own denomination or deny equal rights to other denominations.

Reasons for Separation.—The adoption of the principle of separation was due to the following considerations: (1) the advanced sentiment of the Friends and the Baptists; (2) the practical impossibility of selecting a state church from among the several bodies willing to be considered for the honor; (3) the opposition of those indifferent or hostile to religion; (4) the dissatisfaction developed by the raising of church revenues by taxation in Virginia and elsewhere; (5) the principle of no taxation without representation as applied to levying taxes for the support of a particular church upon those belonging to other churches or no church; (6) the principle of establishment was inconsistent with the fundamental doctrines of a democratic government.

States.—The Constitution left the states free to have establishments of religion if they saw fit. The previous favor of some of the colonies for particular churches did not suddenly cease when they became states; both in Massachusetts and Connecticut persons could still be taxed for the support of a church of which they were not adherents, and there was one standard of faith and polity in each community or parish, from which all others were dissenters. This system was brought to an end in Connecticut in 1818 by a new constitution which severed the relation between church and state, and made all religious bodies equal before the law. Massachusetts decreed separation in 1834, returning, after a lapse of two centuries, to the original Pilgrim principle of voluntarism.

Indian Schools.—Since separation was fully accomplished many questions have arisen touching church and state. Among these were legislative appropriations and grants to religious bodies for educational, charitable and other purposes. A movement for the prevention of sectarian appropriations, begun in the last quarter of the nineteenth century, resulted in a complete change of legislative policy in this respect. Under the administration of President Grant, immediately after the war, the various religious bodies were offered aid from the federal treasury in carrying on educational work among the Indians, the Government entering into an agreement to pay part of the expenses of maintaining boarding schools for Indian youth, under the care of missionary societies. The annual appropriations by Congress for these contract schools reached $600,-

000, the Government allowing from $95 to $108 per student for clothing and food. Some of the denominations refused them, on principle; and most of the churches, or missionary societies, which maintained contract schools, declined to continue them on "sectarian appropriations," holding them contrary to the spirit of the Constitution and a dangerous departure from the principle of a free church in a free state. Finally Congress, in obedience to public opinion, discontinued, at the close of the century, the appropriations for contract schools, in the words: "And it is hereby declared to be the settled policy of the government hereafter to make no appropriation whatever for education in any sectarian school."

Benevolent Institutions.—In the states, grants for institutions under sectarian control, such as schools, orphanages, protectories, etc., had been quite general, the theory being that, as these institutions care for homeless children and others, for whom state maintenance might otherwise be demanded, it was proper that part of the expenses, particularly those incurred in educating the inmates, should be provided from the public treasury. Abuses of the privilege, and instances of official favoritism, were brought to light and were used by the National League for the Protection of American Institutions and other organizations, to arouse public opinion to the dangers involved, the outcome being the incorporation in most of the state constitutions of a clause forbidding sectarian appropriations to religious institutions, churches and schools.

Public Schools.—For years controversy has flowed around the public schools. The Roman Catholic church objects to the system because it provides only secular education, insisting that its children ought to receive religious instruction also, by those authorized to impart it. It further objects to the reading of the King James version of the Bible, as sectarian and mutilated. Failing to induce any states to adopt any of the various plans intended to provide for religious instruction of Roman Catholic children attending the public schools, either during or after school hours in the school buildings, it has gradually developed a more or less complete system of parochial schools supported by voluntary contributions for the children of Roman Catholic parents. Sometimes a small fee is charged. The American Federation of Catholic Societies holds that it is unjust to tax Roman Catholics for the support of public schools which they cannot, in good conscience, patronize, and to compel them to support their own schools at large expense. The Roman Catholic church is not quite alone in urging the importance of providing religious instruction for school children; the Lutheran, German Reformed and other bodies, also maintain parochial schools.

The public schools are not completely secularized. The Bible is still commonly read at the beginning of the morning session, and the Lord's Prayer is recited in unison. Atheists and Free Thinkers and non-Christians object to these exercises, and ask, along with not a few devoted Christians, that they be discontinued, in harmony with the principle of separation of church and state, to which the federal and state governments are committed.

Taxation of Property.—This is another question which relates itself to this principle. All states exempt from taxation, with some limitations and modifications, property used exclusively for religious or charitable purposes, and also exempt bequests to religious objects from inheritance taxes. California, for some years, taxed all property, including churches, but changed its constitution at the beginning of the present century to conform to the law of other states. It is conceded by many Christian writers on this subject that the logical conclusion is with the side that insists on the taxation of church property. The voluntary principle, they say, is inconsistent with indirect state aid through the remission of taxes. The reply is, in effect, that church property is not exempted because it is used for religious purposes, but because it is devoted to the public good. It is the benevolent character of the organizations that is recognized, as in the case of colleges and non-religious societies engaged in charitable work, whose property is likewise free from taxes.

There are numerous points where church and state seem to touch, as, for example, in the appointment, with pay from the federal treasury, of army and navy chaplains, chaplains of the two Houses of Congress, and of penal institutions; the issuing of presidential proclamations of Thanksgiving to Almighty God for the harvest, etc.; but these acts are not in conflict with complete separation of church and state. They are in simple recognition of the fact that the great majority of the people are religious, and that those who are engaged in the service of the state are entitled to religious leaders and the opportunity of worship.

So far as the courts are concerned, it is settled that religious bodies have the right to adopt and enforce such ecclesiastical legislation as they may deem necessary, owning and controlling property as other corporations hold and control property including the holding of Roman Catholic property by the bishop as a corporation sole. The courts do not interfere, unless civil law is violated, as, for example, in sanctioning polygamous relations; or unless when differences arise between factions and civil tribunals they are asked to decide which shall control the property. In such cases, the courts give full consideration to denominational legislation in so far as it does not violate civil law and equity.

Government has enacted abundant legislation for the protection of all religious bodies in their right to assemble for worship on Sun-

day and at other times; and, in order to insure quiet for service on the weekly day commonly observed as a day of worship, in most, though not all, states it is required that ordinary labor and business transactions be suspended and the first day of the week observed as a *dies non.*

As to the practical wisdom and complete success of the principle of separation of church and state, the history of the United States is an abundant demonstration. The Revolution swept away a system that had obtained for centuries in all other Christian countries, and left the churches, some of which had been liberally helped by the state under the colonial régime, disorganized by the war, almost bereft of ministers, lacking bishops and other ecclesiastical officers, with no institutions to train ministers, and with little or no endowment. They had little church property, the church buildings had become dilapidated and the congregations had been scattered. It was under such untoward circumstances as these that the denominations began their careers as separate, independent bodies, compelled to provide for themselves all necessary material requirements, or go out of existence. Before 1789 the churches had, with a courage and devotion scarcely equalled since the apostolic age, begun the work of reorganization. The hardships and difficulties all the churches had to face, with such slight resources, evoked not a word of dissent for the new order of voluntaryism. Immigration has brought us millions from countries where the church has state support; but these adopted citizens are as loyal to the principle of separation as are those born on American soil.

See EDUCATION AS A FUNCTION OF GOVERNMENT; LIBERTY, CIVIL; LIBERTY, POLITICAL; PSYCHOLOGY OF THE CROWD; RELIGIOUS LIBERTY.

References: For colonial relations and subsequent disestablishment, A. L. Cross, *Anglican Episcopate and the Am. Colonies* (1902); L. W. Bacon, *Hist. of Am. Christianity* (1897), chs. viii, xiii; A. H. Newman, *Hist. of the Baptist Churches in the U. S.* (1894), chs. vi, vii; C. C. Tiffany, *Hist. of the Protestant Episcopal Church* (1895), ch. xi; Williston Walker, *Hist. of the Congregational Churches in the U. S.* (1894), ch. vii; T. O'Gorman, *Hist of the Roman Catholic Church in the U. S.* (1895); *Am. Church Hist. Soc.* (1893–97); P. Schaff, "Church and State" in Am. Hist. Assn., *Papers*, II (1887). For brief historical sketches of denominations and statistics, H. K. Carroll, *The Religious Forces of the U. S.* (1895); G. J. Bayles, "Church and State in the U. S.," in *New Schaff-Herzog Encyclopedia* (1909), III, 110–112. Public school controversy and sectarian appropriations, J. M. King, *Facing the Twentieth Century* (1899). Roman Catholic position concerning Bible in public schools, Bishop James A. McFaul, *American Federation of Catholic Societies; Am. Year Book, 1910*, 723–736, and year by year.

HENRY KING CARROLL.

CIPHER DISPATCHES. The telegraphic correspondence in cipher, in the disputed election contest of 1876 between men connected with the national Democratic committee and persons in the states who were seeking a Republican elector who might be purchased for Mr. Tilden (*see* TILDEN, SAMUEL J.). The key was deciphered and the "dispatches" published in the New York *Tribune.* See ELECTORAL COMMISSION OF 1877. O. C. H.

CIRCUIT COURT OF APPEALS. See COURTS, FEDERAL.

CIRCUIT COURT OF THE UNITED STATES. See COURTS, FEDERAL; COURTS, FEDERAL, JURISDICTION OF; COURTS, FEDERAL, SYSTEM OF.

CITIES. See MUNICIPAL GOVERNMENT IN THE UNITED STATES.

CITIES, CLASSIFICATION OF. Special legislation on the part of state legislatures for the cities became so general and burdensome during the first of the nineteenth century that constitutional provisions were adopted in a number of states to prevent it, Ohio and Virginia being the first (1851) to adopt such provisions. Notwithstanding, cities were so classified as to amount almost to a nullification of these provisions. Particular cities demanded additional powers and these were granted by state statutes applying nominally to a class of cities; but the system of classification was such as to evade the constitutional prohibition. In Illinois, and possibly a very few other states, the prohibitions against special legislation may have been effective but as a general thing they did not accomplish the ends desired. It was early recognized by the courts that laws applying to a certain class of cities complied with the requirement for general laws. Classes of cities were consequently created, each class having a different method of organization and different powers. The classification is usually based on population at a certain period or to apply to all cities having a given population. There are sometimes as many as five classes. The New York state constitution limits the number of classes to three. Where no restriction is imposed as to classification, the courts generally hold that the classification must be reasonable, and if reasonable, the law will be legal even if there be only one city in the class. This view is not held by the courts of Ohio, and there the one general municipal code applies to all cities of the state. See CHARTERS, MUNICIPAL; CHICAGO; CITY AND STATE; MUNICIPAL GOVERNMENT. **References:**

J. A. Fairlie, *Essays in Municipal Administration* (1908), 110–118; F. J. Goodnow, *City Government in the U. S.* (1904), 93–97.

H. E. F.

CITIES, GROWTH OF. The cityward movement is world-wide. It is the result of conditions characteristic of the time rather than of any particular country. Only 3.14 per cent of the people of the United States in 1790 lived in cities of 10,000 or more, while 33.2 per cent of the Australians of 1891 lived in cities of that size, though the populations of the two countries at the dates mentioned were almost equal. Chicago is regarded as a prodigy of rapid growth, but Berlin added 200,000 more to its population from 1837 to 1890 than Chicago did. In 1800 London had 900,000 more people than New York City. In 1911 Greater London, within a radius of 15 miles, had about 1,250,000 more than New York had in 1910, within a 15 mile radius from the City Hall. In 1800 Philadelphia was 190,000 behind St. Petersburg. In 1910 it had 130,000 less than St. Petersburg had in 1905. In 1890, the population of the United States living in urban places of 2,500 or more was 36.1 per cent of the whole; in 1900, 40.5 per cent, and in 1910, 46.3 per cent. In New York, New Jersey, Pennsylvania, Maryland, Ohio, Illinois, Colorado, California, Washington and all of the New England states except Vermont, the urban population was more than half of the total.

Altogether there were, in 1910, 2,405 urban places; 1,173 had a population of between 2,500 and 5,000 each; 629 between 5,000 and 10,000; 329 between 10,000 and 25,000; 120 between 25,000 and 50,000; 59 between 50,000 and 100,000; and 50 had more than 100,000 The rate of increase for the last decade was highest in cities of from 50,000 to 250,000, being nearly 42 per cent. The rate for the entire urban population was 38.5 per cent as against 11.1 per cent for the rural population.

Among the most rapid increases are those of Los Angeles, from 102,479 in 1900 to 319,198 in 1910; Seattle, from 80,671 to 237,194; Portland, from 90,426 to 207,214; Oakland, from 66,960 to 150,174; and Spokane, from 36,848 to 104,402. Even San Francisco, in spite of its destruction by earthquake and fire in 1906, showed an increase of 21.6 per cent, which was slightly more than the rate in Boston or Pittsburgh. Birmingham, Ala., gained 245.4 per cent; Atlanta, 72.3 per cent; Detroit, 63 per cent, and Denver, 59.4 per cent. Of the cities between 50,000 and 100,000, Dallas showed an increase of 116 per cent; Ft. Worth, 174.7 per cent; Jacksonville, 103 per cent; Oklahoma City, 539.7 per cent; Schenectady, 129.9 per cent; Tacoma, 122 per cent; and Wichita, 112.6 per cent. St. Joseph, Mo., nominally grew smaller, falling from a census figure of 102,979 in 1900 to one of 77,403 in 1910. Baltimore, Cincinnati and Louisville showed a slow growth, 9.7 per cent, 11.8 per cent and 9.4 per cent respectively being their rates for the decade.

The ten largest cities in the world in order are London, New York, Paris, Tokio, Chicago, Berlin, Vienna, St. Petersburg, Philadelphia and Moscow. Berlin, if its immediate suburbs were included, would rank ahead of Chicago and Tokio. New York City spends more money on its government and has a larger debt than any other city in the world; it also has the largest population subject to one municipal government in the world. Paris, the third city of the world, had 2,763,393 people within the city proper in 1905, while the population of Greater Paris was estimated in 1908 to be 3,960,000.

See City Planning; City and the State; Municipal Government, Functions of; Municipal Government in Continental Europe; Municipal Government in the United States, Organization of; Population of the United States.

References: A. F. Weber, *Growth of Cities* (1899); *Am. Year Book, 1911*, and year by year; C. E. Merriam, *Report on the Municipal Revenues of Chicago* (1906); D. F. Wilcox, *Great Cities in America* (1910); U. S. Census Bureau, *Bulletins* (1910, 1911), *Century of Population Growth* (1909).

Delos F. Wilcox.

CITIZENSHIP, BUREAU OF. The Bureau of Citizenship is one of the bureaus of the Department of State (*see* State, Department of). It is charged with the registration of the decisions of the courts with reference to the naturalization (*see*) of aliens, with the issue of passports, and the protection of the rights of citizens, travelling or temporarily resident abroad. **Reference:** Secretary of State, *Annual Reports*. A. N. H.

CITIZENSHIP IN THE UNITED STATES

Definitions and Distinctions.—Internationally viewed the citizens of a state constitute a single homogenous body of individuals whose rights and obligations are the same. Constitutionally viewed, however, it is within the discretionary power of each state to group these citizens into various classes to each of which special privileges and immunities, whether political or civil, are accorded. In all modern states this right to classify is exercised, if only to distinguish between male and female, adult and minor citizens; but in

the United States the question of citizenship is an especially complicated one by reason of our federal form of government.

Everyone who owes obligations to a state is a citizen of that state. Even aliens temporarily in, or permanently domiciled in, a state are held to owe a qualified allegiance to the political sovereignty within whose territorial limits they are, and may thus be said to be, in a certain sense, citizens of that state. But, generally speaking, they are not treated as citizens, and therefore, the body of persons at any given time within the borders of a state may first of all be divided into citizens and non-citizens or aliens, and to the discussion of the status of the first of these classes this article is devoted. As has been already suggested, citizens may be classified and given distinctive rights as male and female, adult and minor. Thus the political rights of the suffrage and eligibility to public office are very generally restricted to adult males, and the private or civil rights of men and of women and of adults and of minors, of course, vary widely. So far, however, as their general right to protection when abroad is concerned no distinction between these classes of citizens is ever made.

Natural-Born and Naturalized Citizens.—Another important classification is that between natural or native-born and naturalized citizens. A naturalized citizen is one who, originally an alien, becomes a citizen by satisfying certain requirements for naturalization which are laid down by the state whose citizen he becomes. What these requirements shall be lies wholly within the discretionary judgment of the state concerned. It would seem, however, that when the citizens of certain states are singled out for exclusion from the operation of the naturalization laws, just ground for an international grievance upon the part of the state whose subjects are discriminated against is furnished, unless there be some other peculiar and substantial reason for the exclusion. It is also to be observed that though a naturalized citizen of the United States becomes entitled to all the rights and privileges of the natural-born citizen, except as to eligibility to the presidency and vice-presidency, which disqualifications rest upon constitutional provisions (Art. II, Sec. i, ¶ 4; and Amendment XII), he is not necessarily freed from his former allegiance. This depends upon whether his native state concedes to him the right to expatriate himself, or, if it does, whether he has satisfied the conditions upon which such concession of the right of expatriation is granted.

The rule for determining whether or not one is to be considered a native-born citizen or subject (the two terms are practically synonymous, though the former is preferred in democratically organized states) is not a uniform one among modern states. Indeed, there are two distinct rules, the one accepted by some states and the other by the remaining states. According to the first of these rules, the citizenship of the parent is determinative; according to the second, the place of birth is controlling. The first is known as the rule of *jus sanguinis;* the second, as the rule of *jus soli.*

The Fourteenth Amendment (*see*) to the Constitution of the United States declares that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." In the famous case of United States *vs.* Wong Kim Ark (169 *U. S.* 649), decided in 1898, the question arose whether this provision obligates the United States to such an absolute adherence to the doctrine of the *jus soli,* as to compel it to recognize as one of its native-born citizens one born within its borders but of parents who not only are aliens, but of a race the members of which are, under existing statutes, excluded from the right to become citizens by naturalization. The decision of the court was that the constitutional provision does have this force and effect. The intent of the words of the amendment "and subject to the jurisdiction thereof" which qualify the clause "all persons born in the United States" was declared to be "to exclude, by the fewest and fittest words (besides children of members of the Indian tribes, standing in peculiar relation to the National Government, unknown to the common law) the two classes of cases—children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state—both of which, as has already been shown by the law of England, and by our own law, from the time of the first settlement of English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country." The effect of this decision is, of course, to abridge both the treaty-making power of the Federal Government as well as the legislative control of Congress over the subject of naturalization, for it renders it impossible either by treaty or statute to exclude from citizenship children born within this country of parents of whatsoever foreign nationailty. It is further to be observed, however, that the doctrine of this case does not prevent our Government from recognizing as native-born citizens children born abroad of American parents, and, in fact, to a certain extent, this acceptance of the *jus sanguinis* exists now, and has existed for years.

Federal and State Citizenship.—Owing to its federal form of government an important distinction exists in the United States between federal and state citizenship. Before the adoption of the Fourteenth Amendment there was more or less controversy as to the interrelationship of these two kinds of allegiance, a

controversy which assumed an acute form in the Dred Scott case (Scott *vs.* Sandford, 19 *How.* 393), and, in 1861, was submitted to the arbitrament of arms. Prior to the Dred Scott case (*see*) it seems to have been generally held that a citizen of a state was *ipso facto* a federal citizen, and that, reciprocally, a citizen of the United States, resident within a state, was a citizen of that state. As to which of the two citizenships was the more fundamental there was no agreement. This question was placed beyond all dispute by the result of the Civil War, and received definite constitutional statement in the words of the first section of the Fourteenth Amendment, which have already been quoted. For, it will be seen that who are to be eonsidered citizens of the United States is definitely determined by fundamental law, and, furthermore, that the states do not preserve the right to decide who shall constitute their own citizen body, for it is provided that the mere taking up of residence within their borders, a fact which they are not able to control, operates to make citizens of the United States, whether naturalized or native-born, citizens of the state concerned. That the right to establish the conditions of naturalization is vested exclusively within the discretionary powers of the Congress is not disputed. Though thus subordinated to federal citizenship, state citizenship as a distinct status with its own attendant privileges and immunities still exists as clearly, if not as independently, as it did before the adoption of the Fourteenth Amendment. This was made evident by the Supreme Court in the decision which it rendered in the Slaughter House cases (*see*). The court there says: "The distinction between citizenship of the United States and citizenship of a state is clearly recognized and established [by the Amendment]. Not only may a man be a citizen of the United States without being a citizen of a state, *e. g.*, residents of the District of Columbia, or of the territories, but an important element is necessary to convert the former into the latter (*see* DOUBLE CITIZENSHIP). He must reside within the state to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union. It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a state, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual." The court then goes on to lay down the important doctrine that the states still possess the exclusive control of the civil and political rights of the individuals resident within their borders, subject only to the restrictions of the Federal Constitution, and excepting only those privileges and immunities which arise out of, and are peculiar to, federal citizenship. Political rights within the state are wholly within the control of the states, and may, indeed, be granted to persons not citizens either of the United States or of the states; and thus, in a number of instances, the suffrage has been granted to aliens who have filed their first papers declaring an intention to seek naturalization.

Status of Indians.—The status of Indians, according to United States constitutional law, is a peculiar one. They are citizens of the United States in a broad sense of the word, and foreign powers in their dealings with them recognize them, and, indeed, are obligated to recognize them, as such. But, constitutionally viewed, until formally made citizens, they are treated rather as wards of the nation than as members of its citizen body. They and their lands are under the exclusive control of the Federal Government, but they have none of the special privileges and immunities of federal citizenship except in so far as the Federal Government has seen fit to grant them. They are not citizens of the United States and of course are not citizens of the state in which they live except when they have been given federal citizenship. This grant of citizenship lies wholly within the discretionary will of Congress. Until that body has acted, no Indian can obtain citizenship, even though he may be civilized, separate himself from his tribe and take up his residence outside of an Indian reservation (Elk *vs.* Wilkins, 112 *U. S.* 94). Upon the other hand, Congress may, by statute, provide for the naturalization of Indians, who thereby, without action or desire upon their own part, become invested with the full status of citizenship (*see* INDIANS, CONSTITUTIONAL AND LEGAL STATUS OF).

Citizenship in the Territories.—In the absence of treaty stipulations to the contrary, the allegiance of the inhabitants of an annexed territory is, by the annexation, transferred to the annexing state. Just what grade of constitutional citizenship will be assigned them depends upon the will of the new sovereign power, although it is not unusual for guarantees to be inserted in the treaty transferring the political title, as to the rights and privileges to be accorded to the persons thus handed over to the control of a new political power. In the treaty of 1899 whereby the United States acquired political title to the insular possessions of Spain, it was provided that the cession was not to operate as a naturalization of their inhabitants, but that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress." Since then it has been held by the Supreme Court that these territories have not been "incorporated" into the United States, and it would seem necessarily to follow from the reasoning employed to reach this decision, that the native inhabitants of the islands are citizens of the United States only in the broadest sense of that word. Thus, in

the act of 1902, providing for a civil government for the Philippine Islands, they are described as "citizens of the Philippine Islands, and as such entitled to the protection of the United States." In the act of 1900 providing for a civil government in Porto Rico, the native inhabitants are similarly designated as "citizens of Porto Rico." By an act passed in 1906 provision is made for the naturalization of "all persons not citizens who owe permanent allegiance to the United States, who may become residents of any state or organized territory of the United States." That the inhabitants of the insular dependencies of the United States are not aliens within the meaning of the immigration laws was held in the case of Gonzales *vs.* Williams (192 *U. S.* 1).

See Alien; Citizenship, Bureau of; Declaration of Intention to be Naturalized; Indians, Constitutional and Legal Status of; Insular Cases; Natural Born Citizens; Privileges and Immunities of Citizens; Territory, Constitutional Questions of.

References: J. H. Wise, *American Citizenship* (1906); F. Van Dyne, *Citizenship of the U. S.* (1904); A. P. Morse, *A Treatise on Citizenship* (1881); J. B. Moore, *Digest of Int. Law* (1906); "Report on Citizenship of the U. S. Expatriation, and Protection, Abroad" in *House Reports*, 59 Cong., 2 Sess., No. 326 (1907); W. W. Willoughby, *U. S. Const. Law* (1910); U. S. Dept. of State, *Passport.* W. W. Willoughby.

CITIZENS' MOVEMENTS AND PARTIES. See Independent Movements in Politics; Parties, State and Local; Voting, Independent.

CITY. The term city is used to describe an incorporated municipality as well as an aggregation of population within a comparatively small area. The former use is legal or political; the latter is sociological. The city, as a municipal corporation, has a two-fold character; it is established by law partly as an agency of the state to assist in the civil government of the state; but principally to regulate and administer the local or internal affairs of the city—to provide for local necessities and conveniences.

The incorporated or legal city has specific political duties to perform and is endowed with certain definite powers of legislation and regulation over the community incorporated. "This power of local government is the distinctive purpose and the distinguishing feature of a municipal corporation proper." The number of inhabitants required for incorporation varies in the several states. In the United States "city" is often used interchangeably with "municipality." In Great Britain, "city" is generally applied to an incorporated town which is or has been the seat of a bishop. See Cities, Growth of; City and the State.

References: H. S. Abbott, *Municipal Corporations* (1905), 11–12; J. F. Dillon, *Municipal Corporations* (4th ed., 1890), 38.

H. E. F.

CITY AND THE STATE

The City as a Municipal Corporation.—The American city is a municipal corporation created by the state, deriving all its powers from state statutes and subordinate in all its activities to state authority. "Municipal corporations are mere instrumentalities of the state for the more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged, or entirely withdrawn at its pleasure" (Meriwether *vs.* Garrett, 102 *U. S.* 472). The state has the right to govern the city just as it governs the state at large. It may enlarge or contract the powers of a municipal corporation, or even destroy its existence" (U. S. *vs.* Baltimore and Ohio R. R., 17 *Wall.* 322). It would be difficult to state more unrestrictedly the principle of municipal subordination.

Limitations on State Supremacy.—But, notwithstanding this general supremacy of the state legislature, there are two important limitations upon its authority in dealing with matters of local administration, namely, those restrictions embodied in the Constitution of the United States, and those contained in the constitution of the state itself. The former of those limitations, for example, takes away from every state in the Union its power to emit bills of credit, pass any law empowering the obligation of contract, or take private property for public use without compensation (Art. I, Sec. x, ¶ 1). What the state cannot do, it of course cannot empower any subordinate authority to do. Even more important and more numerous are the limitations imposed upon the legislatures by their own constitutions. In the earlier days of the constitutional history of the United States these limitations were comparatively few, but during the nineteenth century, the disposition to insert restrictions concerning legislative interference with local affairs became apparent whenever constitutions were revised, and during the last thirty or forty years this tendency has grown stronger.

Constitutional Limitations as to City Government.—Constitutional limitations upon the

freedom of the legislature to deal with city affairs are of great variety. Many of them relate to the form and methods of framing city charters. Thus, in some states, the legislature is forbidden to charter cities by special act; in others, it is required to grant them charters in this way. Some state constitutions prohibit changes in city charters save with the consent of the citizens. Others guarantee the citizens the right to frame their own charters and to enact them into force by a referendum, in other words, the home-rule charter system. Other common limitations are those which restrain the legislatures from giving cities undue borrowing powers or from empowering municipalities to lend their credit to private enterprises or from granting franchises for longer than a certain term of years. Some constitutions contain clauses forbidding the appointment of city officials by state authorities; others set definite limits to the taxing power of municipalities; and others, again, prohibit the enactment of state legislation for individual cities. This last restriction has been incorporated into the constitutions of nearly a score of states; but it is of all limitations one of the least difficult to evade. That is partly because the term "special legislation" or "special act" is not one which explains itself. The courts must determine in each individual case whether legislation is or is not special within the meaning of the constitutional restriction; and their rulings upon this point have usually been very liberal. The courts have, in most cases, felt that if an act is general in scope, but from the circumstances of its application happens to be special in incidence, it ought to be held to be a general and not a special act. Thus, for example, a law which provided for the establishment of a harbor police in all cities of the state situated at tidewater would probably be held not to be special legislation in spite of the fact that its provisions affected a single city.

Methods of Evading Constitutional Restrictions.—Another way in which the state legislature may evade the constitutional prohibition of legislation for individual cities is by a system of classifying municipalities and legislating specially for each class. In the absence of any constitutional requirement to the contrary, the courts have usually held that this classification may be so arranged as to put only a single city in each class. Therefore, when a legislature has desired to pass a special law for a single municipality, it has merely had to designate such municipality in some other way than by name. By this subterfuge, which the courts have permitted until very recently, constitutional prohibition of special legislation for cities has been rendered practically valueless. In 1873, for instance, the constitution of Pennsylvania made provisions that the legislature should pass no special law relating to the government of counties or cities in that state. When, however, the legislature enacted a special law applying to all cities of over three hundred thousand (which meant Philadelphia alone), the Supreme Court of the state held that such law was not in conflict with the constitutional provision. To check this practice the constitutions of some states have fixed a maximum number of classes of cities which the legislature may create, this maximum being placed usually at four. A few states have gone somewhat further and have incorporated the actual classification in their constitutions, thereby reducing to a minimum the opportunities for special legislation.

New York Method.—A somewhat novel restriction upon the legislature's freedom is the qualified local veto provision contained in the constitution of New York state. This constitution groups the cities of the state into three classes, and the legislature may pass any law applying to all cities in any one of the three classes without securing the concurrence of the city authorities. It is not forbidden to pass legislation applying to a single city; but it is required, before it does so, to consult the city concerned. When a measure applying to a single city (or to less than all the cities in a class) has passed both branches of the legislature, it must be sent to the mayor of the city for his acceptance. If this acceptance be not given, it must again be passed by the legislature before it is sent to the governor for his signature.

Frequency of State Interference.—In spite of all these constitutional limitations, however, state legislatures have a broad sphere of action in relation to municipal affairs and they have used their powers unsparingly. In the case of the larger cities legislative interference both with the organization and the functions of municipal administration has been so unremitting as to constitute in many cases an obstacle to the development of sound local traditions. In some cases this state interference has been supported by excellent reasons. Where the police administration of a large city has become corrupt or inefficient so that the statutes stand disregarded, state legislatures have interfered to set matters right. So, also, in their effort to deliver cities from the grip of spoilsmen through the enactment of civil service laws, in the establishment of tax and debt limits as safeguards against local improvidence, and in many similar ways, legislative interference with municipal autonomy has been entirely justifiable. But not all such interference has been prompted by proper motives; much of it, on the contrary, has been actuated by the desire to serve partisan or personal ends. To help the dominant political party or to gain the favor of public service corporations the state legislatures have often betrayed the best interests of larger cities in defiance of the will of the city. Scarcely a session passes but the legislatures of Massa-

chusetts, Illinois, Pennsylvania, and Missouri deliver their quota of special enactments relating to Boston, Chicago, Philadelphia, and St. Louis. It would be idle to urge that their prolific output of special legislation is either needed or desired by these cities, or that it would ever be forthcoming if the cities themselves had power to order it otherwise. From 1885 to 1908 the legislature of Massachusetts passed no fewer than four hundred special laws relating to the government of the city of Boston, so that the volume containing the revised statutes relating to this single city now includes more than six hundred pages. Many of these special acts, if not the majority of them, embody legislation which was unnecessary, ill-considered, and primarily partisan. Yet the legislature of Massachusetts, doubtless, does its work as carefully as the legislature of any other state of the Union, and is more respectful of the rights of local authorities than most of them.

Home Rule Charter System.—Of the various methods of protecting cities against legislative meddling with their affairs, the most effective is that known as the home-rule charter system. This system appears to have had its origin in the Missouri constitution of 1875, which gave to cities of over a hundred thousand population the right to frame and to enact their own charters. Provision was made enabling the voters of any city to elect a charter board of thirteen members, in other words, to choose a miniature constitutional convention. This board might frame a new city charter or revise the old one, submitting its work, when finished, to the qualified voters of the city at a regular election. During the first quarter-century following its adoption, this system gained little headway outside the state of its origin; in 1900 it had extended to three other states only, California, Washington, and Minnesota.

By January 1, 1913, eight other states incorporated in their constitutions the principle of the Missouri plan, namely, Colorado, Oregon, Oklahoma, Michigan, Arizona, Ohio, Nebraska and Texas.

Among these dozen "home-rule" charter states there are considerable differences in the practices and machinery of charter making. In some of them the initial step in adoption or revision of a frame of government may be taken upon the petition of a prescribed number of voters; in others, the city council makes the first move, and in one state, Minnesota, the initiative may be taken by the district court. In all cases the actual work of drafting the charter is entrusted to a commission commonly called the board of freeholders, made up of from thirteen to twenty-one members chosen by popular vote. In all cases, moreover, the finished draft is submitted by referendum to the qualified voters of the city. Usually the charter goes into effect upon a simple majority of polled votes, but in some states more than this is required. In Minnesota there must be an affirmative vote of at least four-sevenths; in California the charter does not become effective until the legislature has also approved it; and in Oklahoma it goes to the governor of the state for his signature. But in California the legislative assent has become a mere form and in Oklahoma the governor is required by the constitution to sign the charter unless it appears to be in conflict with the general statutes of the state. Amendments for home-rule charters may usually be initiated by voters' petition and ratified by referendum.

Objections to Home-Rule System.—The chief objection commonly urged against the system of home-rule charters is that it gives the voters of individual municipalities an unwarranted freedom in determining things which may be of almost equally great concern to the state as a whole. In other words, it is urged that there can be no clear line of demarcation between functions and responsibilities which are municipal in character and those which appertain to the state. Since, for example, state and municipal elections are often held upon the same day, with the same ballots, the same officers in charge of the polls, and with the same securities for fairness, it may well be questioned whether any state is under obligation to allow every municipality to be a law unto itself in matters relating to elections and election procedure. So, likewise, with reference to police administration. The city's police are appointed by the municipal authorities and are paid by them; but their chief function is, after all, the enforcement of state laws, and in most states the courts have upheld the doctrine that they are state officers. Likewise, if one considers such matters as the organization of municipal courts and the administration of local justice, the system of compulsory elementary education, the assessment of taxes, and the exercise of borrowing authority, it will appear that the line of cleavage between matters of municipal and state jurisdiction is not easy to draw. Hence the courts have usually held that municipal charter provisions do not supersede the general state laws in any matter which is of more than purely local concern. This ruling has of course greatly narrowed the amount of autonomy which a city may obtain under a home-rule charter system.

Burden of Charter Legislation.—On the other hand there are some good arguments in favor of a system which leaves to each city the making and unmaking of its own charter. One of these may be found in the increasing difficulty which state legislatures encounter in their attempt to give proper consideration to charter matters. It is not uncommon, in states like Massachusetts or New York, for the legislature to find itself confronted at each session with scores of bills proposing charter amendments in various cities. Even in West Virginia, where urban communities are not nu-

merous, a legislative commission reported a few years ago that charter matters which came before the legislature of that state not only failed, because of their complexity, to receive adequate consideration but seriously impeded the proper discussion of matters affecting the state as a whole.

Furthermore, the system of home-rule charter-making premises that matters affecting individual cities shall be dealt with by the men most immediately concerned, that is to say, by the voters of the community. Where the legislature holds all charter matters in its own hands it is invariably found that the men who have the most influence in determining the acceptance or rejection of the various proposals emanating from cities are those who have the least local knowledge. Senators and representatives from rural districts often control the legislature's action as respects the affairs of the metropolis. The statute books abound with instances of provisions railroaded into the charters of New York, Boston, Philadelphia, and other large cities by up-state legislators who were qualified neither by temperament nor knowledge to act wisely or well. If states would avoid these evils of special legislation their recourse must be either to the general charter law system or to the home-rule charter plan. But, as has been already pointed out, the former of these alternatives has not proved very satisfactory in operation, being altogether too easy to circumvent when legislatures desire to be meddlesome. Much of the popularity of the home-rule charter system is doubtless due, therefore, to the fact that it seems to be the only satisfactory alternative to a continuance of the present special-charter policy pursued in most states. Its extension is quite apt to be a prominent feature of American political development during the next few years.

Legislative and Administrative Control of Cities.—The American city has no inherent authority; its charter is a grant of powers. Consequently, there is much opportunity not only for legislative but for administrative control on the part of the state authorities. But of administrative interference there has not been very much, although there are signs, nowadays, that there will be more in the future. This is because legislative control, when not backed up by administrative machinery suitable to its enforcement, is habitually ineffective. State legislation sets bounds to the taxing power of the city, determines the scope of the city's licensing power, and requires the municipality to provide certain local services. But in the absence of definite enforcing authorities there is apt to be frequent departure from the observance of these legislative mandates. Hence, many states have established permanent boards or commissions and have entrusted to these the immediate administration of the liquor laws, the election laws, or the laws relating to public health. State boards of education, state civil service commissions, and various state bodies controlling public utilities all afford examples of a tendency to place more faith in administrative than in legislative supervision.

In addition to that general administrative control which covers all the cities of the state without distinction, some of the states have given special supervision to the affairs of single cities or groups of cities. Massachusetts, Missouri, and Maryland have committed to specially appointed state authorities the police departments of Boston, St. Louis, and Baltimore. Other states, while not venturing so far, have held their larger cities under special tutelage. Indeed, if one regards in their totality all the examples of state administrative interference that the recent history of municipal government affords, it will appear that steady advance is being made along this line. That, however, is not to be regretted, for administrative supervision is likely to be based upon knowledge and skill which is more than can be truly said of legislative interference in city affairs. It is calculated to secure consistency; it does not give undue affront to local pride; and it is effective in accomplishing what it sets out to do.

See BOARDS, MUNICIPAL; CHARTERS, MUNICIPAL; CITIES, CLASSIFICATION OF; CIVIC PROBLEMS; LOCAL SELF GOVERNMENT; MAYOR AND EXECUTIVE POWER IN CITIES; MUNICIPAL GOVERNMENT, ORGANIZATION OF; MUNICIPAL GOVERNMENT, FUNCTIONS OF; ORDINANCES, MUNICIPAL; POLICE IN AMERICAN CITIES; RIPPER BILLS.

References: A. R. Hatton, *Digest of City Charters* (1906), esp. 1–48; H. E. Deming, *Government of Am. Cities* (1909), chs. iii. ix, xii; F. J. Goodnow, *Municipal Home Rule* (1903), *Municipal Government* (1909), ch. viii; M. R. Maltbie, "City Made Charters" in *Yale Review*, XIII, 380–407; J. A. Fairlie, *Local Government and Municipal Administration* (1906); A. B. Hart, *Actual Government* (rev. ed., 1908), *National Ideals* (1907), ch. vii; T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), ch. viii; J. F. Dillon, *Commentaries on the Law of Municipal Corporations* (5th ed., 1911); D. B. Eaton, *Government of Municipalities* (1899); A. de Tocqueville, *Democracy in America*, Gilman, Ed. (1898); bibliography in A. B. Hart, *Manual* (1908), 146; "Municipal Home-Rule Charters" in Legislative Ref. Dept. of Wisconsin, *Bulletin No. 18* (Dec., 1908).

WILLIAM BENNETT MUNRO.

CITY ATTORNEY. The city attorney or corporation counsel is the chief legal officer of the American municipality. He is sometimes chosen by the city council, but more often appointed by the mayor. His term of office is usually from two to four years and his annual salary varies from two to ten

thousand dollars according to the size of the city. He is the legal adviser of the mayor, the city council, and all municipal boards or officers and furnishes opinions upon matters of law when requested to do so by any of these authorities. In addition, he has general charge of the city's interests in all litigation before the courts or in all pending state legislation. Reference: A. Train, *Prisoner at the Bar* (1908). W. B. M.

CITY CLERK. The city clerk is the chief secretarial officer of the municipality and is usually chosen by the city council for a term of two years or more. His functions are to keep the corporate seal, to attend the meetings and record the proceedings of the city council and its committees, to keep on file all papers and documents pertaining to the work of this body and to put in proper form all ordinances passed by the council. He also conducts such part of the city's official correspondence as does not come definitely within the jurisdiction of the individual administrative departments. See MUNICIPAL GOVERNMENT, FUNCTIONS OF.
W. B. M.

CITY ENGINEER. The city engineer is the officer in charge of the technical branches of municipal construction. He is usually appointed by the mayor; but in some cities is chosen by the council and in some others is selected under civil service rules. His term of office varies from one to five years. His duties are to supervise the preparation of plans for new streets and street improvements, for parks, water supply extensions, sewer constructions, public buildings and similar municipal undertakings. In addition he is usually charged with the drawing of specifications for all contracts involving public construction and with the inspection of such work when it is in progress. See PUBLIC WORKS, NATIONAL, STATE AND MUNICIPAL; SEWERS; STREETS.
W. B. M.

CITY PHYSICIAN. The city physician or health officer is the chief official, sometimes chairman, of the municipal board of health. He is usually chosen by the city council or the mayor for a term of three or more years. His general duties are to give the mayor and other city authorities professional advice on all matters relating to the public health and sanitation, to execute measures for preventing the spread of contagious diseases or for the abatement of nuisances, to act as coroner or to supervise the work of coroners and sometimes to supervise the registration of births and deaths and the granting of burial permits. See HEALTH, PUBLIC, REGULATION OF.
W. B. M.

CITY PLANNING

Definitions.—City planning means the orderly arrangement of the different factors and functions of a city with a view to health, practical convenience and beauty. The term is often used to refer primarily to the grouping of public buildings about a civic center, the attainment of architectural harmony between adjacent structures along the street, and the introduction of landscape vistas and other ornamental features in the plan of a city. It may refer to the provision of proper light and air for dwellings and of parks for crowded districts, or the widening of business streets, the cutting of diagonal thoroughfares through built-up sections, the relocation of railroad terminals and other physical changes designed to improve urban traffic conditions.

City planning includes these æsthetic, hygienic and engineering features of good city arrangement and also much more. It deals with the entire anatomy and physiology of the physical city, including its suburbs—the assignment of the requisite space to communication, by waterways, railroads, streets, sidewalks, alleys, pipes and wires; the most advantageous allocation of the remaining spaces to manufacturing, warehouses, trade, administration, homes, education, churches, theatres, parks, playgrounds, hospitals and other social functions; the distribution of needed public utilities in a comprehensive way, and the tying together of all these elements in the most convenient and efficient manner for their respective purposes. The task of city planning is that of scientifically organizing the modern city and its environs in all their parts and interrelations for the economic and higher ends of the entire community.

A general movement is going forward both in Europe and America for far-seeing and comprehensive city planning in the interest of commercial progress and human welfare and in the light of the modern economic factors, the factory and the railway. It is best exemplified in Germany, where it has been definitely under way for half a century; less well established in Austria, Sweden and Switzerland; as yet little marked in France, where population and industry are increasing but slowly; has made a recent but strong beginning in Great Britain; and is fairly started in the United States.

German System.—German cities in appropriate powers, trained officials and well devised procedure are the best examples in the world of foresight in directing municipal develop-

ment. Aside from large traditional powers the cities have, since 1874, been clothed by their respective states with special powers for city planning. Many cities have a city planning department, with an able and enthusiastic staff, whose business it is to carry out these purposes. If the city owns land, and wishes to open it for building, this department makes the plan. If private owners wish to open areas for building, this department likewise makes or passes upon the plans.

These plans do not merely fix street lines and provide for sewerage and water service, but they prescribe in great detail the entire scheme of laying out; they provide for proper street, and perhaps railroad or tramway, connection with the existing city; they determine the directions, widths, grades, and fore-gardens of the streets, the location of the local business center, the districts where manufacturing may be carried on, the squares to be kept open, and the reservations for schools, libraries, hospitals, parks, playgrounds or baths; they fix the permissible heights and the distances apart of the buildings to be erected, and thus determine the number of houses to be permitted per acre. These details are carried out in conformity with the "zone plan," generally adopted by German cities, under which the regulations as to height, depth, distance apart and character of buildings, and as to the kind of occupations allowed in particular districts, vary for different parts or zones of the city. These carefully adjusted regulations assure occupants and investors as to the future character of their neighborhoods.

Certain superior provincial and in some cases state authorities must approve the action of the city planning department, and, on appeal, decide upon objections by owners. Several months are generally and one or two years often, occupied in perfecting and securing approval for such a plan. It is then strictly followed, unless subsequently changed by similar procedure.

The department also devises plans—carefully illustrated perhaps by colored maps or by accurate models, for revising the framework of the older parts of the city for better traffic or more sanitary conditions, as may be demanded from time to time by the city's growth. In cases where large districts are to be laid out, and especially where the general plan of a city as a whole is to be revised, it is usual for the city to submit the problem to a competition among experts, with large prizes for the best plans. Thus the number of experts is constantly recruited, and the ideas of different specialists are brought to bear upon the same problem.

Financial Arrangements.—European city planning is financed in different ways. Under the most advanced practice in Germany the owner of an unoccupied area being planned for building is required to donate the land for streets, for school and other public buildings and for parks and playgrounds. About 30 per cent of the entire area is thus required of him, 5 per cent being for parks and playgrounds. Some cities have power to resubdivide an entire district where advisable, giving each owner as nearly as practicable what he had before, or an equivalent, and eking out an equitable adjustment by money payments between owners and in special cases from the city to owners. Expensive city reconstructions are sometimes financed in part by the city's acquiring not only the land for the improvement but also adjacent land likely to appreciate from the improvement and then selling it at the advanced price due to the improvement. Vienna has gradually carried out important street widenings by granting owners an abatement of taxes for a period of years on condition that they would rebuild within a given period in accordance with the new street lines. A land increment tax also prevails to a large extent in German cities as a means of swelling city revenues.

Great Britain.—British cities have never had the benefit of adequate supervision of their general physical development. No branch of government, central or local, has had the definite and specific duty of shaping a city's total organization in the most advantageous manner. The British Town Planning Act of 1909, however, is a very important step in this direction in respect to unbuilt districts. It aims to secure the careful planning of such districts rather than the remodelling of old city areas. The act confers upon cities broad powers, under the supervision of the local government board of the general government, especially with a view to providing good conditions of home life, and one of its purposes is to lay definite restrictions in advance upon the number of families per acre for which houses may be erected in new districts.

Garden Cities.—The main purpose of this act is to apply to all residential areas hereafter developed the idealistic standards of space, comfort and beauty expressed in the remarkable "garden city" movement which has been developing in England through private initiative since 1895. Letchworth, a self-contained semi-industrial city, now of 7,000 people, begun by a philanthropic company in 1904 on a beautiful unoccupied site of six square miles north of London is well planned, the number of houses, one to a family, is limited to six to ten per gross acre, the unearned increment goes to the community. Many "garden suburbs," have been started by manufacturers, estate owners or coöperative groups, the plans being made with much care, the cottages —designed by able architects—being often adapted to occupants of small means and the permissible number of families per acre being definitely limited.

The United States.—City planning in the United States has never risen to a high level. In a few cases, mostly early, there were conscious efforts for idealistic results, but on the whole decline has been more conspicuous than progress. If, for example, William Penn's foresight respecting park reservations in his original plan of Philadelphia, made in 1681, had been followed out, that city would now have 280 small parks, systematically distributed instead of 45, very unsystematically distributed. When we compare Lake Forest, Riverside, Pullman and Gary—suburbs of Chicago except Pullman which is now inside of the city—laid out respectively in 1857, 1869, 1886, and 1905, it is seen that the idealism of the first two is largely lacking in Pullman, and totally in Gary.

The most notable instance in this country and perhaps in the entire world of an important city thoughtfully laid out in advance of construction is that of our national capital, planned by Captain L'Enfant Nigo, an Americanized French engineer, under the direction of President Washington in 1791. The scheme consists of a checkerboard street system, upon which is superimposed another street system comprising diagonal thoroughfares, the chief of which radiate from a spacious central square reserved for the Capitol. Of Washington's 275 public parks, some are "circles" at points where more than two streets cross, but most are small triangular spaces at the intersections of diagonal with right-angle streets. European city planning experts generally avoid to-day the plan of the geometrical figures, the undeviating straight lines of the Washington plan, and the "Parisian" star points, as they do also its decorative "circles" so placed as to interrupt the course of streets. Nevertheless, Washington is recognized as the chief conribution of America thus far in practical city planning, and as among the important city planning examples of history. Unfortunately the authorities have permitted inexcusable invasions of its lines and have neglected to carry out some of its important monumental features.

Lack of City Planning.—American city planning has thus tended to deteriorate from the examples of the eighteenth century, and sporadic idealism in this direction of the nineteenth. The absorption of the public mind in the Civil War, and then in the scramble for the undeveloped resources of the country left city planning too generally to the lot-seller. In some Pacific coast instances, for example, hillsides were cut into squares by streets utterly impassible because of their steepness, although these same sites, if properly treated, might have been rendered peculiarly attractive. The proper distinction between business or traffic streets on the one hand, and residential streets on the other, was generally overlooked, a great portion of city streets being just sixty-six feet wide, because that happens to be the length of a surveyor's chain. The monotonous checkerboard street scheme, yielding the largest number of lots and being the simplest for lot descriptions, was generally adopted, irrespective of contours.

In the whole course of modern life there is no corresponding example of the tragic consequences of placing great tasks in little hands. The cities of the United States have largely been "laid out" by surveyors—men accustomed to measure and mark land areas according to geometrical lines for easy transfer. As they divided up the national domain by roads into quarter sections to be sold or preëmpted, so they divided up a proposed town site by streets into blocks of lots for sale. Two or three of these streets were made wider than the others and designated for business; a square area at the chief street intersection was reserved for the capitol building or the court house, in case the site was for a state capital or a county seat—and the job was done. No attempt was made to locate in an orderly manner in advance the varied institutions and functional factors of the community. The inhabitants themselves were left to do the real planning of their city afterward, handicapped instead of aided by the thoughtless gridiron of streets and lots already adopted and the rapid dispersion of ownership thereafter. The task naturally proved too difficult for them, and the patchwork method of city design—the method of finding the best available place for a schoolhouse, factory, or playground, as the demand for it arose, and then forgetting such subjects until the next case compelled attention—became the established American practice.

Systematic Plans and Repairs.—The resultant crudeness and disorder, however, were bound in time to induce efforts for reform, and such efforts have, during the last decade, taken definite shape. Within that time more or less comprehensive expert studies have been made for the physical improvement of at least seventy-five cities in this country, each by a particular specialist or a commission of specialists, as for example, an architect, transportation expert, and a landscape architect. These cities vary in size from the national metropolis down to communities of a few thousand people. Such studies, partly official and partly made by chambers of commerce, commercial clubs, architectural societies, civic leagues or other voluntary organizations, indicate a nation-wide effort toward scientific city planning henceforth.

Some of the reports deal only with particular spots or problems, such as the city's main square or civic center, or the question of parks and boulevards; while others, of which the most conspicuous are the Commercial Club's "Plan of Chicago," issued in 1909, the Boston Metropolitan Improvement Commission's report of the same year, the reports of the Civic Commission in 1910 for the improvement of Pittsburgh and the Municipal Plans Commis-

sions report of 1911 for the improvement of Seattle, deal broadly with the city's organization.

Difficulties.—Here and there particular items of the recommendations thus made are being carried out, but in the main they are still in the picture stage. Less than a score of American cities have special city planning authorities, and these are clothed with very limited powers. Most states have provided no proper legislation for the creation of such authorities, and the state constitutions, in many cases, stand in the way of giving them requisite powers. American cities are, for example, prohibited by constitutions from adopting the European system of differential building regulations for light and air in different sections or zones; from the European practice of taking more land in case of public improvement than is required for the improvement and then selling it at the advanced price due to the improvement, thus recouping a part of the cost; from adopting land increment taxes; from dealing in land with a view to keeping its prices down and generally directing the course of city development; from using, like Vienna, a tax exemption scheme to promote street widening; from establishing building lines back of the street lines; and from resubdividing an area needing rearrangement of streets and private lots, for traffic or sanitary reasons.

The cost of city planning improvements must, in general, be met either by special assessment upon property benefited or from the city treasury, and American cities are subject to strict limitations upon their revenue-raising powers. They are not generally allowed to operate any profit-yielding public utilities except waterworks, nor to require the donation of sites for schools, parks and playgrounds as a condition of approving street plans for subdivisions, nor to imitate European practice by prohibiting building before a plan of the district affected has been officially approved and the ordinary utilities installed in the streets. Thorough-going treatment of the subject of city organization is thus prejudiced by lack of enabling state legislation or made impossible by state constitutions, difficult of amendment.

The American city planning movement is the next logical step in the line of the humane movements of the last two or three decades for better dwellings, more parks and playgrounds, improved transportation, more sanitary surroundings and pleasanter sights for city people. Broadly considered it gathers up all these movements, and responds also to the business effort for higher efficiency in the economic activities of cities. Its future success is wrapped up with the effort for better public control of public utilities as factors in city organization, with the simplification of government areas, bodies and elections, in order to make government efficient; and especially with the effort to modernize our constitutions.

The National Conference on City Planning, organized in 1909, brings together at its annual meetings from 100 to 200 persons from different parts of the country, a considerable fraction of them specialists, to discuss city planning matters, and publishes its proceedings. The municipal exhibition in Dresden in 1903 contained considerable material concerning city planning. A city planning exhibition was held as a branch of the exhibition in 1909 of the New York Committee on Congestion. A similar one was held in Boston the same year. This suggested the idea of the International City Planning Exhibition held in Berlin, May-June, 1910, which was the most extensive display on this subject thus far held anywhere. Next in scope and interest was the City Planning Exhibition held by the Royal Institute of British Architects in London in October 1910. The largest exhibition of the sort yet shown (1913) in this country was conducted by the City of Philadelphia in connection with the meeting of the National Conference on City Planning in May, 1911. A very creditable exhibition was assembled in Providence, in November, 1911, by the Rhode Island Chapter of the American Institute of Architects.

See Art Commissions; Capitals of States; Congestion in Cities; Health, Public, Regulation of; Monuments, Public; Parks and Boulevards; Playgrounds; Public Buildings, Federal, State and Municipal; Public Works, National, State and Municipal; Real Estate, Public Ownership of; Street Commissions and Commissioners.

References: Camillo Sitte, *Der Städtebau nach seinen Kunsterlerischen Grundsätzen* (4th ed., 1909), French trans. by Camille Martin (1902); J. Stubben, *Der Städtebau* (1907); Rudolph Eberstadt, *Handbuch des Wohnungswesens* (2d ed., 1910); T. C. Horsfall, *Example of Germany* (1905); Raymond Unwin, *Town Planning in Practice* (2d ed., 1911); H. I. Triggs, *Town Planning, Past, Present and Possible* (1909); J. S. Nettlefold, *Practical Housing* (1908); National Conference on City Planning, *Proceedings* (1909 and following), first one printed in *Senate Docs.*, 61 Cong., 2 Sess. No. 422 (1909); B. C. Marsh, *Introduction to City Planning* (1909); P. M. Robinson, *Width and Arrangement of Streets, A Study in Town Planning* (1911); *Der Städtebau* (monthly); *Town Planning Review* (quarterly); *American City* (montly); *Am. Year Book, 1910*, 232, 745, 747, and year by year; F. L. Olmstead, *New Haven Replanning* (1910), *Improvement of Boulder, Colo.* (1910), *City Planning for Pittsburg* (1910); John Nolen, *Replanning Small Cities* (1911); Lawrence Veiller, *Housing Reform* (1910); biliography on "City and Town Planning" in Public Library of Boston, *Bulletin, Series III*, No. 2 (1910) 180–199; J. M. Carrére and T. Hastings, *City Planning of Hartford* (1912).

George Ellsworth Hooker.

CITY RECORD. New York City seems to have been the first city to establish a municipal paper or journal. The *City Record of New York* was established in 1873 and has been published daily since that time except on Sundays and holidays. It contains official matters such as reports, proceedings of the Board of Aldermen and of the various departments and bureaus of the city government. All legal notices of the city government are placed in the *City Record,* though brief advertisements in some of the daily papers call attention to their appearance in the *City Record.* In addition to the regular daily edition, various supplements are published during the year, among them being the canvass of votes at elections, the assessment of real estate, land valuation maps, etc. During the years 1910 to 1912, several cities undertook the publication of municipal papers for the purpose of giving information about the city government. Among these may be mentioned *Denver Municipal Facts; Progressive Houston; Philadelphia; Boston City Record;* San Francisco, *Municipal Record;* Los Angeles, *Municipal News* (discontinued, 1913); Memphis, *Commission Government;* Baltimore, *Municipal Journal; Sacramento Gazette;* and Chattanooga, *Municipal Record.* The *City Record* of Boston is the only one of these which carries the city legal notices. The other municipal papers are illustrated and are sent free to all who desire them, while the New York and Boston papers are sent to subscribers only. See COUNCIL, MUNICIPAL; LEGISLATION AND LEGISLATIVE PROBLEMS IN CITES; PUBLICITY. **References:** *City Record of New York* and the other papers mentioned; C. R. Woodruff "Municipal Newspapers" in *Survey,* Aug. 19, 1911. H. E. F.

CITY TREASURER. The city treasurer is the custodian of municipal funds. He is sometimes elected by popular vote, sometimes chosen by the city council and sometimes appointed by the mayor. His term is from one to five years and provision is sometimes made that he shall not be reëligible. The treasurer receives all taxes, licenses and other civic revenue, as well as the proceeds of loans. He is responsible for the proper deposit and custody of these funds. On warrant from the comptroller or other proper authority he makes all disbursements necessary in the conduct of the city's business. W. B. M.

CIVIC CENTER. "Civic center" from a city planning standpoint is the name applied to a group of public buildings centering about the principal administrative building of the city. It may consist only of a city hall or borough hall with an ample approach or it may consist of many buildings grouped about a large plaza or court of honor as in the case of Cleveland, Ohio. The name civic center has often been applied to a group of buildings used almost exclusively for social purposes, as the Soulard Civic Center in St. Louis. But, in order to make a distinction, city planners have agreed to call the latter a social center. Nothing would prevent, however, buildings of both classes being in the same group. The buildings in the civic center group are not necessarily confined to those used exclusively by the municipality. In the case of Cleveland, Ohio, and in New York City, both federal and state buildings as well as city buildings are included in the composition.

The object of the civic center is several fold: (1) to group the buildings used for governmental administration so that there may be the maximum economy of time and trouble in going from one building to another; (2) a greatly enhanced architectural effect may be obtained by one building offsetting another; (3) citizens of the community may have a showing for the money expended which will appeal vastly to their pride; (4) the stranger in visiting the city may be impressed with its magnificence and with its public spirit.

Civic centers as above defined actually exist in a very few cities in America, but plans for such centers have been made in from fifty to one hundred such cities and towns. These projects have been illustrated in local publications.

See CITY PLANNING; PUBLIC BUILDINGS; SOCIAL CENTER.

References: Royal Institute of British Architects, Town Planning Congress, *Report* (1910); Hartford Municipal Art Society, Bulletin No. 2, *Grouping of Public Buildings* (1904); T. H. Mawson, *Civic Art* (1911); Raymond Unwin, *Town Planning* (1911); H. Inigo Triggs, *Town Planning* (1909); J. Gaudet, *Theorie de l'Architecture* (1902); Patrick Geddes, *Study in City Development* (1904); E. T. Ward, *Social Center* (1913). GEORGE B. FORD.

CIVIL LAW. See LAW, CIVIL.

CIVIL RIGHTS. Civil rights are those which belong to the individual as a result of his membership in organized society, that is, as a subject of civil government. They are entirely the offspring of law and may be contradistinguished from so-called natural rights or such as are inherent in the nature of man and which are said to belong to him by virtue of the law of nature rather than of positive law. To a large extent, however, civil rights are nothing but natural rights which have been created and defined by the state. Again, they may be distinguished from political rights or privileges, or such as the state confers upon certain classes of its citizens, usually adult males of good character, for the purpose of giving them a share in the choice of public officers and in the conduct of the government. Such is the right to vote and hold public office. In strictness, civil rights belong only to citizens whose civil status has not been

impaired by judicial condemnation. In a wider sense, however, they are the great fundamental rights of all the inhabitants of the state, that is, they belong to all persons within the jurisdiction of the state and not merely to citizens. This is the view embodied in the Fourteenth Amendment to the Federal Constitution which prohibits the states from depriving any person of life, liberty or property without due process of law or from denying to any person within their jurisdiction the equal protection of the laws. See LIBERTY, CIVIL. References: J. W. Burgess, *Political Science and Constitutional Law* (1891), I, 203–206, 227–223; T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), ch. xiii; F. J. Stimson, *Federal and State Constitutions of the United States* (1908), Bk. I, chs. ii–iii; J. Schouler, *Ideals of the Republic* (1909), ch. iii; *Slaughter House Cases* (1872, 16 *Wall.* 36); *U. S. vs. Cruikshank* (1875, 92 *U. S.* 542); *Civil Rights Cases* (1883, 109 *U. S.* 11). J. W. G.

CIVIL RIGHTS BILL. The Civil Rights Bill was introduced by Senator Trumbull, from the judiciary committee, January 11, 1866. Its object was to protect the civil rights of negroes. It provided that: "All persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States, and . . . shall have the same rights . . . to make and enforce contracts, . . . to inherit, . . . and convey real and personal property, and to full and equal benefit of all laws . . . and shall be subject to like punishment. . . ." Heavy penalties for violations were provided and the United States courts were given jurisdiction. It was passed March 15. President Johnson vetoed it March 27, and it was passed over his veto, April 9; giving the first indication that his opponents had a two-thirds majority. It was largely superseded by the Fourteenth Amendment (*see*) July 21, 1868. A supplementary bill, relating to the use of inns, etc., passed March 11, 1874, was declared unconstitutional in 1883. See RECONSTRUCTION. References: *Cong. Globe*, April 4, 1866; J. F. Rhodes, *Hist. of the U. S.* (1904), V, 580–586; J. D. Richardson, *Messages and Papers of the Presidents* (1897), VI, 405–413; E. C. Mason, *Veto Power* (1890), § 42. C. R. F.

CIVIL RIGHTS, CONSTITUTIONAL GUARANTIES OF. Those rights of life, liberty and property which are enjoyed by virtue of membership in organized society and which it is the principal function of government to protect may be denominated, in general, civil rights. They are distinguished from political rights which are dependent upon government for their creation as well as their protection. No specific enumeration of civil rights would be possible, for their formal definition depends on the evolution under any particular judicial system of the rules in accordance with which remedies will be afforded for their violation and the fact that certain rights have thus been defined does not exclude the recognition on further consideration of other rights not heretofore ascertained. They may, no doubt, be created by legislation, but they are usually treated as natural or inherent, subject however to legislative definition, regulation and limitation. An important purpose of a written constitution is to prevent undue encroachment on civil rights by the government organized under such constitution. In our state constitutions such protection is afforded by specific guaranties constituting that part of such a constitution usually designated a bill of rights (*see*) and by provisions regulating the exercise of power by different departments of government (*see* SEPARATION OF POWERS) as well as, in a broad sense, by the express or implied provision that no one of the three departments shall exercise powers not expressly conferred upon such department or reasonably included by implication among the powers so conferred. In the Federal Constitution there are specific guaranties of civil rights which are restrictions on the Federal Government (Art. I, Sec. ix; Amendment IX) and others limiting state power (Art. I, Sec. x; Art. IV. Secs. i, ii; Amendment XIII and Amendment XIV, Sec. i). There is, as to the Federal Government, the implied limitation that it cannot exercise any other powers than those expressly delegated or reasonably implied therefrom (*see* IMPLIED POWERS). Recognizing these principles, the United States Supreme Court in the Civil Rights Cases (1883, 109 *U. S.* 3) held unconstitutional those portions of the federal Civil Rights Act (*see*), Mar. 1, 1875 (18 *Stat.* 335) which purported to guarantee to all persons regardless of color equal enjoyment of the accommodations of inns, public conveyances, theaters and other places of public amusement. The rule announced is that civil rights are left to the regulation and protection of the states save so far as expressly or by implication brought within federal protection and that the Fourteenth Amendment (*see*) guarantees such rights only as against infringement by the states. After this decision was rendered many of the states passed statutes of similar import which have been held valid so far as they guarantee to persons of color equal accommodations with white persons in places of public resort, that is places of business or amusement maintained in pursuance of a public calling or on property devoted to a public use. See BILLS OF RIGHTS; FOURTEENTH AMENDMENT; CONTRACT, FREEDOM OF; FREEDOM OF SPEECH; LIBERTY, CIVIL; MUNN VS. ILLINOIS; RELIGIOUS LIBERTY. References: T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), ch. x; E. McClain, *Constitutional Law in the U. S.* (3d ed., 1910). EMLIN MCCLAIN.

CIVIL SERVICE COMMISSION, FEDERAL. The first federal civil service commission was appointed by President Grant in 1871 under a provision attached to an appropriation bill of that year, giving the President power to prescribe regulations for the admission of persons into the civil service and to employ suitable persons to inquire into the fitness of candidates. It was known as the "Advisory Board" and consisted of seven members, with George William Curtis as its first chairman. The board remained in nominal existence until its functions were superseded by the commission created by the Civil Service Law of January 16, 1883; but its activity was confined to the years 1871–75, during which it established examining boards in the departments in Washington and in the federal offices in New York, classified the positions and introduced the competitive system of appointments. Upon the failure of Congress to appropriate for its support, however, President Grant in 1875 suspended the rules, which were not revived, except in a limited way for the New York post-office and custom house in President Hayes' administration.

The Civil Service Commission created by the act of January 16, 1883, which is still in force and has never been directly amended, is composed of three members appointed by the President with the advice and consent of the Senate. They have no term of office and are removable by the President at will. The law prescribed that not more than two of the commissioners shall be adherents of the same party. They receive salaries fixed by the act at $3,500, but Congress has raised the salary of the president of the commission to $4,500, and that of the other commisioners to $4,000. Their duty is "to aid the President, as he may request, in preparing suitable rules" to carry the act into effect. Subject to the supervisory power of the President over all branches of the federal service, the actual administration of the civil service law and rules is confided to this commission, which, with the aid of a large force of clerks, examiners and district secretaries, conducts examinations throughout the country, regulates promotions, transfers and reinstatements, and institutes very careful investigations into the actual enforcement and effect of the law.

See Appointments to Office; Civil Service Examinations; Civil Service, Federal; Merit System in Promotions in the Civil Service.

References: C. R. Fish, *Civil Service and the Patronage* (1905), "Removal of Officials by the President of the United States" in Am. Hist. Assoc., *Annual Reports* (1899), I, 67–86; L. M. Salmon, "Appointing Power of the President" in Am. Hist. Assoc., *Papers* (1899), I, No. 5; U. S. Civil Service Commission, *Reports*; National Civil Service Reform League, *Publications*; J. A. Fairlie, *National Administration* (1905), 252–257; E. B. K. Foltz, *Federal Civil Service as a Career* (1909). Elliot H. Goodwin.

CIVIL SERVICE EXAMINATIONS. Civil service examination, is the method prescribed by civil service laws for determining the comparative merit and fitness of candidates for appointment to positions in the public service. In form they are similar to examinations conducted in schools and colleges but in substance they differ in a number of important respects. Unlike examinations for entrance to the civil service of England which are conducted mainly on the principle of securing young men of a certain grade of education and scholarship according to the grade of the service to which they seek entrance and after appointment training them to the specific duties of particular positions, examinations in the United States are practical tests for the particular position in which vacancies exist or are anticipated. The United States civil service law of 1883, which has served as a model for subsequent legislation on this subject, prescribed that the examinations "shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed." Similar provisions are to be found in all other civil service laws in this country.

This system requires the holding of a far larger number of specialized tests for particular positions than the plan which generally prevails in European countries. Contrary to foreign precedent, civil service laws in the United States proceed upon the theory that in private employment there are a number of persons engaged in work similar in all respects to that required in public positions; special training and education is therefore unnecessary and the examination is for the purpose of selecting from this number those best fitted to perform the duties. During the year ended June 30, 1912, the United States Civil Service Commission held 430 different kinds of examinations, of which 318 included educational tests and 112 non-educational for mechanical and lower grade positions. Comparatively few of the so-called educational tests require more than a common school education, and the statistics available for certain state and city services show that the number of candidates who have received a college education and compete successfully average less than one in ten. In examinations of recent date, however, for the higher positions in the public service there has been a marked tendency toward the adoption of the English plan.

Civil service laws usually prescribe that examinations shall be free, open and competitive. Only in Colorado and the city of Seattle has the English precedent of charging fees for examinations been adopted and in these juris-

dictions the fees are extremely low. Open examinations have been construed to admit of the exclusion of persons who are not citizens of the United States and state and municipal civil service laws usually confine the examinations to residents. Competitive examination has been generally adopted after the failure to regulate the abuses of the spoils system by non-competitive examination had been clearly demonstrated.

For purposes of examination the laws divide the classified service subject to the civil service rules into a number of classes, usually designated as the exempt class, the competitive class, the non-competitive class, and the labor class. Positions in the exempt class are not subject to examination, but are governed by the rules in other particulars. Non-competitive examinations are used for temporary appointments and for positions which are undesirable because of the poor remuneration or the menial character of the duties attaching to them. For the selection of unskilled laborers in the labor class, various methods have been resorted to in order to exclude political appointments and the employment of the unfit. The plan usually adopted is to give employment in the order of application, each applicant being required to furnish references as to character and ability to perform the work. Frequently physical examinations are also required for laborers.

Competitive Examination.—Competitive examinations are used in the selection of candidates for appointment or promotion in the civil service. They are usually written tests which occupy most of a day and sometimes several days. Oral examinations are permitted by law and are coming more and more into use as tests of personality and experience for particular positions. Actual experience in work of the same or similar character is almost invariably an important factor in examinations. In the competitive examination the names of those who succeed in securing a passing mark are arranged upon an eligible list in the order of the percentage received and the appointing officer is limited in selection for appointment, usually to the three names standing highest upon the appropriate eligible list. This strictly circumscribes the power of an appointing officer to make selections for personal or political reasons. The rule that three names shall be certified for one vacancy is in force in the federal service and in most of the state and city civil service laws. In Chicago, however, and a few other civil service jurisdictions only the name of the person standing highest upon the eligible list is certified for a vacancy, allowing no choice to the appointing officer. Under the law applying to the city of Philadelphia four names are certified for each vacancy.

See Appointments to Office; Civil Service, Federal; Civil Service, State; Merit System.

References: Civil Service Commissions, *Reports*; National Civil Service Reform League, *Publications*; E. B. K. Feltz, *The Federal Civil Service as a Career* (1909); D. B. Eaton, *Civil Service in Great Britain*, (1880); A. L. Lowell, *Colonial Civil Service*, 1900; P. S. Reinsch, *Readings on Am. Federal Gov.* (1909), ch. xii.

Elliot H. Goodwin.

CIVIL SERVICE, FEDERAL

The federal civil service comprises all positions of trust or employment under the United States Government except those that are included in the military and naval services. It is divided into the executive, legislative and judicial services, of which by far the largest is the executive civil service. The total number of officers and employees of the United States is estimated at over 500,000. On June 30, 1912, the executive civil service numbered approximately 395,460.

Classified Service.—The executive civil service is divided into classes according to the manner in which appointments are made to it. The highest class are the presidential offices, to which appointments are made on nomination by the President and "by and with the advice and consent of the Senate." These presidential offices numbered 10,397 in 1912 and included heads of departments and their assistants, postmasters, collectors of customs and internal revenue and other heads of local offices outside of Washington, chiefs of bureaus and a number of miscellaneous positions. The vast majority of subordinate officers and employees of all grades are appointed by the heads of departments. Since the passage of the civil service law in 1883 these are divided into the unclassified positions, numbering in 1912, 59,423, the excepted and non-competitive positions, 25,056 and the competitive positions, 272,393. The civil service law does not admit of the classification of positions appointments to which are subject to confirmation by the Senate, except with the Senate's consent, nor of mere laborers; but by section 1753 of the Revised Statutes, enacted in 1871, the President is given power to make regulations for the admission of persons into the civil service, and under this authority approximately 23,000, classed as laborers have been brought under competitive regulations, so that the total number of federal employees subject to the merit system is approximately 300,000.

The Pendleton Act.—Following the unsuccessful attempts to mitigate the evils of the spoils system, first by means of non-competitive examinations under a law passed in 1853 and second through competitive examinations established by authority of the Civil Service Act of 1871, which failed of its purpose owing to the opposition of Congress, a complete and detailed civil service law, known as the Pendleton Act (*see*), was signed by President Arthur on January 16, 1883. This law is still in force and has never been directly amended. It provides for a civil service commission of three, which should aid the President in preparing rules to carry the act into effect; for open competitive examinations to test the fitness of applicants; for the appointment to office from among those graded highest in such examinations; for the apportionment of appointments among the states and territories upon the basis of population; for a period of probation before absolute appointment; and for non-competitive examinations in case competent persons are not found to compete. The commission is to administer the rules, conduct examinations, make investigations and submit an annual report of its work. Political assessments are prohibited and the violation of the provisions of the law on this subject is made a misdemeanor. Preference in appointment granted by an earlier statute to persons "honorably discharged from the military or naval services by reason of disability from wounds or sickness incurred in the line of duty" was expressly continued.

Growth of Classified Service.—An act of 1853 had established classes or grades for the clerical service, based on salary. The civil service law of 1883 provided that the rules should apply to positions so classified and others in the customs and postal services to be classified in like manner and then gave to the President power to extend the classification as he might see fit, within the limits set by the act. When the rules took effect six months after the passage of the law, the classified service covered only 13,924 positions. By the action of successive Presidents, as well as by the natural and rapid growth of the service, due to the extension of the functions of government, it has reached its present dimensions. Positions not included within the scope of the rules are known as the unclassified service.

By the end of President Cleveland's administration the competitive classification had been carried upwards to include the grades of chief clerk and chief of division. Under President Roosevelt and President Taft it has been carried still higher until it has nearly reached the limits set by the law, through the classification of deputy collectors of customs and internal revenue, assistant postmasters and fourth class postmasters receiving less than $1,000 annually. There still remain, however, 100,000 positions, mainly of a minor and miscellaneous character, which have never been classified as competitive. Appointment to and tenure of office in the presidential offices and in the unclassified and excepted positions are on a political basis and changes are frequently made on a change in party administration.

Examination; Promotion; Removal.—Within the classified competitive service appointment is based upon standing in examination which to a very large extent excludes political considerations and tenure is usually during good behavior and efficiency. Promotion and increase in salary are, however, controlled by appointing officers, as competitive examinations for promotions have not been instituted by the United States commission. Rules regulating removals from the competitive service have been in force since 1897 and require that the person to be removed shall be furnished with a statement of the cause of removal and allowed a reasonable time to reply thereto in writing. A modification of the removal rule by Roosevelt in 1905, which provided that filing of the reasons for removal as department records should be the only requirement, was cancelled by a presidential order of February 8, 1912, and the rule has now been made statutory. The so-called "gag" order which was issued originally by President Roosevelt and renewed by President Taft, provided that employees could not appeal to Congress or individual congressmen directly for a redress of grievances, but must send their complaints direct to the appropriate heads of departments, who might in their discretion transmit such complaints to Congress. On April 8, 1912, President Taft repealed this order and issued a new order which gave to employees in the civil service full opportunity to address Congress on matters affecting their condition of employment, the only restriction being that such petitions should first be sent to the head of the department, who must transmit them to Congress, but who might attach a statement of his own side of the case. By legislation in 1912, however, the right of direct appeal to Congress for redress of grievances was granted.

The lack of a retirement system for superannuated employees, which leads to the retention of the inefficient and blocks the channels for the advancement of younger and more capable men, has received the attention of the President's commission on economy and efficiency; which submitted to Congress a retirement plan May 6, 1912. A reclassification of salaries upon the basis of duties performed, a regulated system of promotion and reasonable provision for retirement would materially increase the efficiency of the federal civil service.

See APPOINTMENTS TO OFFICE; CIVIL SERVICE COMMISSION, FEDERAL; CIVIL SERVICE EXAMINATIONS; CLASSIFIED SERVICE; PENSIONS, CIVIL; PROMOTIONS IN THE CIVIL SERVICE.

References: E. B. K. Foltz, *The Federal Civil Service* (1909); United States Civil Service

Commission, *Reports;* National Civil Service Reform League, *Publications;* J. A. Fairlie, *National Administration* (1905); P. S. Reinsch, *Readings on Am. Federal Gov.* (1909), ch. xiii; J. H. Finley and J. F. Sanderson, *Am. Executive* (1908), 246–266; C. R. Fish, *Civil Service and the Patronage* (1905).

ELLIOT H. GOODWIN.

CIVIL SERVICE, PROMOTIONS IN. See PROMOTIONS IN THE CIVIL SERVICE.

CIVIL SERVICE, RELATION OF, TO PARTIES. When two political parties are contending for control of the government, the one in power is strongly tempted to appoint only its supporters to office. Thus the appointive offices become a means of influencing voters, of holding in line citizens whose convictions might lead them to support the opposite party. Where these positions are numerous the practice tends to render true party government impossible, because it centralizes all power in the hands of office-holders and office-seekers and shuts out the unprejudiced and uncorrupted citizen.

By means of the bribery of office the Whig party in England controlled the nation for nearly all of the seventy years previous to 1760. By similar means the Tory party maintained almost continuous control of the Government for a like period after 1769. True party government became possible in England only when a large uncorrupted voting constituency was created and appointment to office was placed in the hands of a non-partisan civil service commission. Just at the time when English political parties were ceasing to control elections by the use of offices, American parties adopted the system. In America as in England the tendency has been to shut out the rank and file of party members and to centralize party control in the hands of officers and aspirants for office. After bribery of office was introduced in the United States, the Democrats held almost continuous control of the government until the Civil War. Since the war, office and patronage have been with the Republicans. Corruption and abuse of power increased in national politics until a President was murdered in a brutal conflict over the spoils of office.

Since this event, in 1881, decided progress has been made towards introducing the English system of filling the non-political appointive offices by means of non-partisan civil service examinations. Beginning in the general Government where appointments are most numerous, the reform has been extended to state and city. Experience in England and the United States seems to prove that real party government cannot be maintained unless patronage is removed from the control of party leaders. The ideal condition for party government is reached when the parties are on an equality in their appeal to the voters, when neither can control votes by the offer of patronage.

A few offices filled by appointment, since they are occupied in the fulfilment of party pledges, are partisan in their nature. Such are those of the heads of departments who make up the President's Cabinet. Besides the Cabinet positions there are a few other executive offices carrying party responsibility that are usually filled by those who are in sympathy with the party in power. The great body of the officers in the civil service, however, have no voice in determining policies; they simply obey orders from those in power. Their political opinions have no connection with the duties of their offices. Such persons are left free to change their political opinions and to vote with any party they choose. By the civil service rules now in force in the Federal Government, they are forbidden to take any prominent or active share in politics. This does not prevent private expressions of political opinions, but merely guards the service from political influences within as well as without.

See APPOINTMENTS TO OFFICE; ASSESSMENTS FOR PARTY PURPOSES; CIVIL SERVICE, FEDERAL; PARTY FINANCE; PATRONAGE; SPOILS SYSTEM.

References: J. Macy, *Pol. Parties in the U. S.* (1900); J. A. Woodburn, *Parties and Party Problems* (1903), ch. xvii; T. Roosevelt, *American Ideals* (1897); National Civil Service Reform League, *Proceedings* (1882–1912); C. R. Fish, *Civil Service and the Patronage* (1905); F. J. Goodnow, *Principles of Administrative Law* (1905); L. G. Tyler, *Parties and Patronage in the U. S.* (1891); J. A. Fairlie, *Municipal Administration* (1901), ch. iii.

JESSE MACY.

CIVIL SERVICE, STATE. With the exception of those positions included in the regular militia force or the naval militia, all positions of trust or employment under the state are included in the state civil service, and in practice are divided into the legislative, executive and judicial services. In those states in which civil service laws are in force they apply in the main to the executive civil service, but to some extent minor employees in the courts are also included within their jurisdiction. In the state of Wisconsin alone have employees of the state legislature been brought under civil service rules.

Civil Service Legislation.—The functions of state government have not increased at an equal rate with those of the National Government on the one hand and those of city government on the other, and consequently the state civil service is comparatively small. The spoils system developed in state and local government, particularly in the states of New York and Pennsylvania, a score of years before it obtained a firm foot hold in the national service. Its extension was rapid until it be-

came the recognized system of appointments in all state governments. In spite of this fact, civil service reform, as a method of checking its abuses has received no such widespread application in state services as in national and city services. The first state civil service law, were modelled upon the federal act of January 16, 1883 (*see* PENDLETON ACT), and were adopted in New York in 1883 and in Massachusetts in 1884. Since the beginning of 1905, the movement for state civil service reform has been progressing rapidly. In that year Wisconsin and Illinois adopted civil service laws; in 1907, Colorado; in 1908, New Jersey; while the legislatures of Illinois and Connecticut, 1911, and constitutional amendments in Ohio and California, 1912, have advanced the merit system substantially.

Scope of the Statutes.—The state civil service laws now in force differ widely in scope and character. The New York law has far the widest jurisdiction. In 1894, the constitutional convention inserted a provision in the state constitution, which reads as follows:

> Art. V, Sec. 9. Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive.

A similar provision has been added to the Ohio constitution, and a civil service bill based upon it is (1913) before the legislature.

The civil service law in New York has applied to all the cities of the state since 1884, and now applies to seventeen counties and seven villages as well. Its further extension is in the power of the governor. The Massachusetts law of 1884 was mandatory upon cities as well as for the state government. The Wisconsin law applies only to the state service. The Illinois law of 1905 applied only to state charitable institutions, but by amendments adopted in 1911, was extended to all other branches of the state service. The Colorado law applied only to state institutions, and the New Jersey law to the entire state service, but both these acts provided that municipalities may come under its jurisdiction upon a referendum vote. In New Jersey ten municipalities, including four counties and one village, have adopted the civil service law by means of the referendum.

Commissions.—In general, state civil service laws give more power and independence to the civil service commission and less control over the administration of the law to the chief executive than does the federal statute. The New York law provides for a state commission of three appointed by the governor and municipal commissions appointed by the mayor in each city. These municipal commissions are, however, subject in the exercise of all important powers to the approval of the state commission, which has authority to investigate the administration of local commissions and to remove them for cause. In Massachusetts there is only one civil service commission, appointed by the governor, exercising direct jurisdiction in all cities, as well as in the state service. In New Jersey municipalities which adopt the act by popular vote come directly under the jurisdiction and control of the state commission.

Municipal Civil Service Laws.—The merit system was first applied to cities in New York and Massachusetts in 1883 and 1884. In 1895 Illinois passed a civil service act which could be adopted by the larger cities through the referendum and was at once adopted by Chicago and Evanston. Numerous other cities throughout the country have from time to time secured civil service reform by means of charter amendment or by special laws. In 1910, all cities in Ohio were required by the Municipal Corporations Act to appoint civil service commissions. The movement for the introduction of the merit system in municipal government has progressed very rapidly in recent years and has received added impetus through the popularity of the commission form of city government, in which it is frequently included as an integral part of the commission plan. At present (1913) there are over two hundred cities under civil service rules. Of these, 48 are in New York, 33 in Massachusetts and 71 in Ohio. Outside of these three states the most important cities in which the municipal service is subject to the merit system are Philadelphia, Newark, Chicago, Milwaukee, Kansas City, Mo., Denver, Seattle, Tacoma, Portland, Ore., San Francisco and Los Angeles. The movement, naturally, has spread most rapidly in the thickly populated East.

City civil service laws differ in no important respects from state laws on the same subject. Most of these city laws apply to the entire service of the city, but in a considerable number of cases their application is limited to particular departments, notably the police and fire departments. Some of the city civil services are extremely large. In New York City there are approximately 70,000 positions, all of which, with the exception of 247 in the unclassified service, are subject to civil service rules. (Municipal Civil Service Commission, *27th Report* [1910], 3.)

See APPOINTMENTS TO OFFICE; CIVIL SERVICE COMMISSION, FEDERAL; CIVIL SERVICE EXAMINATIONS; CIVIL SERVICE, FEDERAL; COMMISSION SYSTEM OF CITY GOVERNMENT; PROMOTIONS IN THE CIVIL SERVICE.

References: Civil Service Commissions of New York, Massachusetts, Wisconsin, Illinois, New Jersey and Colorado, *Annual Reports*; National Civil Service Reform League, *Annual Reports*; and other publications of city Civil Service Commissioners, (where the system has been introduced) by name, *Reports*.

ELLIOT H. GOODWIN.

CIVIL WAR, CONSTITUTIONAL QUESTIONS OF

Secession.—The American Civil War, though a struggle of physical force, was tangled in a constitutional discussion begun many years before. The prime question of constitutional interpretation was the nature of the Union. If the Union were a nation, if the Federal Constitution were an instrument of government, the argument for secession was wholly one of constitutional law; if the Union were an association of states, and the Constitution a compact, secession was a question of preference. Hence the intensity with which the South asserted that secession was a reserved right, never yielded by the states, and therefore resisting secession was an aggression, which might lead to international, not to constitutional complications.

Allegiance.—The struggle once begun, the constitutional question took a different form, *viz.*, that of allegiance. To whom did the individual owe obedience, payment of taxes and military service? To the Union or to the states? This was a vital question to men in the federal military or naval service; and they looked upon it in different ways. General Twiggs turned over to the seceders the government property in his charge; Albert Sidney Johnston refused to divert property or men from the United States. Robert E. Lee resigned, because he expected Virginia thenceforth to be outside the Union and he meant to be a Virginian. Winfield Scott, George H. Thomas, and David G. Farragut, all Virginians, felt no obligation to adhere to their state, and took part in the war on the northern side.

To whom was allegiance due in those border states which never passed ordinances of secession? John C. Breckenridge of Kentucky, and many others, took service under the Confederacy, presumably on the belief that their states would have seceded had there been a fair test of public sentiment. Missouri and Kentucky were at one time so divided that both loyal and secession legislatures were in session and regiments from those states and Maryland were entered on the rosters of both armies. By the end of 1862 Missouri, Kentucky and Maryland were all so far within the power of the federal army that the only practical governments in existence in these states were those which recognized the Union.

Rival State Governments.—Another effort to realize the strict constitutional doctrine of the perpetuity of the state was the creation of loyal governments in five of the seceding communities. At the outset of the war, the western counties of Virginia refused to be included by the ordinance of secession, and set up what they claimed to be the only genuine government of the commonwealth. In June, 1863, they were admitted to the Union as the state of West Virginia (*see*). Governor Pierpoint, in his own mind, continued to preside over the Old Dominion, and established a rump government at Alexandria, which was recognized by the authorities at Washington. Tennessee was nearly all within the federal lines after 1862. Andrew Johnson was military governor and then a regular loyal state government was set up, which sent Representatives and Senators to Washington. In Arkansas and in Louisiana elections were held under the amnesty proclamations of 1863 and state governments were set up, which, however, had no authority outside the district actually dominated by federal bayonets.

Loyal State Governments.—The normal status of the loyal states was also disturbed. Even those remote from hostilities saw an irregular, military jurisdiction set up within their boundaries. The provost marshals asserted an authority over enlisted soldiers and sailors which was nowhere authorized by the Constitution; and their numerous arrests of civilians were contrary to law—covered only by a suspension of *habeas corpus* by order of the President, which was not contemplated by the Constitution. Subsequently, Congress passed what was substantially an indemnity act and provided a formal machinery of military commissions which was later questioned if not disallowed by the Supreme Court in the Milligan case.

International vs. Constitutional Issues.—The most serious constitutional question during the Civil War was whether there was a civil war in the legal sense. The theory of the government at the beginning was that the movement in the South was a treasonable insurrection (*see* INSURRECTIONS, THEORY OF) which was to be put down by regularly designated constitutional methods, and with which foreigners had no concern. The Confederacy from the first emphasized the international character of the war. The issue was raised over the status of the crews of certain Confederate ships of war and privateers who had been captured and indicted for treason. The federal courts in New York and Pennsylvania disagreed on the question, but the military authorities gave up the contention that persons acting under the orders of the Confederate Government were still criminally responsible and should be executed as traitors. The principle was really abandoned in April, 1861, when President Lincoln issued blockade orders, since a blockade is indubitably an act of war, and a notice to other nations that war is going on. Neverthe-

less, at the end of the struggle Jefferson Davis, the former president of the Confederacy, was held for treason; but was eventually set free on a technicality, so that no individual suffered after the war because of a wrong constitutional view of allegiance or treason. The United States Government further abandoned the constitutional theory that the seceding states had remained in their old relation to the Union, and practically accepted the theory that the war had been waged between two rival powers and that the defeated party must accept such terms as the conqueror thought proper. Those terms were an eventual restoration to the Union under conditions.

Practical Result.—Though the Federal Government found it impossible either at the beginning or the end of the struggle to make the facts of a civil war correspond with the constitutional theories held by the Government, the question whether a state has a constitutional right of secession was virtually settled by the practical proof that if any state or group of states in the future shall attempt to withdraw from the Union the remaining states will organize and fight. Peaceable secession is, therefore, impossible. Hence, in any future controversy of the same kind, the discussion must turn not on a constitutional right of secession, but on the motives which lead to withdrawal from the federal union.

See ALLEGIANCE; BELLIGERENCY; BORDER STATES; CIVIL RIGHTS; CONFEDERATE STATES; CONSTITUTION OF THE UNITED STATES, GROWTH OF; FEDERAL STATE; FIFTEENTH AMENDMENT; FOURTEENTH AMENDMENT; HABEAS CORPUS; INSURGENCY IN INTERNATIONAL LAW; INSURRECTIONS, SUPPRESSION OF; MARITIME WAR; PARDON, CONSTITUTIONAL PRINCIPLES OF; PRISONERS OF WAR; SECESSION CONTROVERSY; SOVEREIGNTY; STATE SOVEREIGNTY; STATES IN THE UNION; THIRTEENTH AMENDMENT.

References: S. F. Miller, *Lectures on the Constitution* (1891); "P. S. Centz" (B. J. Sage), *Republic of Republics* (1878); J. Story, *Commentaries on the Constitution* (4th ed., Cooley's, 1873, 5th ed., Bigelow's, 1891); J. R. Tucker, *Constitution of the U. S.* (1899); W. Whiting, *War Powers Under the Constitution* (1871); F. E. Chadwick, *Causes of the Civil War* (1906), chs. i, iii, ix; J. C. Hurd, *Theory of National Existence* (1881), *Union State* (1890); A. H. Stephens, *War Between the States* (1868–1870).

ALBERT BUSHNELL HART.

CIVIL WAR, INFLUENCE OF, ON AMEERICAN GOVERNMENT

Military Government.—The first and most visible effect of the Civil War was to expand the military side of the Government enormously. The soldier suddenly became the chief man of the nation. In North and South alike, the war enhanced not only military reputations but a military way of doing things; the country grew accustomed to quick decision, to insistence on harmony and obedience, to a recklessness as to the way in which the result was reached. This military temper was illustrated by the imperious majority which had control of the Government from 1865 to 1875, in which majority many former military men were active. The impeachment (*see*) of President Johnson in 1868 was, to the minds of the Republican Senate, a kind of court martial in which the niceties of evidence or even the discovery of the truth, was secondary to the wish to cashier a member of the service who disagreed with his superior officers.

New Federal Powers.—In time this military influence wore away, but not so the enlargement of federal powers. The Civil War was a successful effort to maintain the principle that in any sectional struggle the states which remained organized under the general Government were in a legal status of supremacy over states which organized to get away from the Federal Government. In this process the states which were subdued lost less of their individuality than the states which had stood by the Union. Notwithstanding the weight of the reconstruction laws the southern states continued to insist upon their primal rights; while the northern states had surrendered to the Federal Government powers and prestige which they never recovered.

The Federal Government for the first time found large sources of revenue outside the customs duties in a variety of internal taxes, including an income tax (*see*), and some of these taxes became permanently rivals to those of the states. The prestige of federal finance was increased by immense government loans; by a government system of currency including the legal tender notes (*see*); by stamping out the state bank notes (*see*). The Federal Government also enlarged its system of criminal law, in part through new services such as that of the national banks (*see* BANKS AND BANKING ACTS, NATIONAL). The power of the government over the militia (*see*) was pushed very far; for the reënlisted veterans made practically a federal force organized with little attention to the states from which the men came.

Enlargement of Former Powers.—Besides these new functions of government the familiar powers were much enlarged. Foreign relations,

entirely centralized in the Federal Government, were of immense importance throughout and after the war. Government finances overshadowed those of the states and cities. The War Department was for a time the principal government activity. By the charter of the system of Pacific railroads in 1862, the Federal Government laid the foundation of its later interstate commerce legislation. The chief civilian figures throughout the war were those of federal officials. The war governors such as Andrew, Curtlin, Dix, Brough, Morton, and Yates, were manful in assembling the forces of their states; but not one of those war governors rose higher than the Senate in the Federal Government. Not only the power but the prestige and the public interest of the time went to the Federal Government.

Unconstitutional Powers.—The national Government was carried away by the storm of the times into acts beyond all former conceptions of federal power. The confiscation acts (*see*) of 1861 and 1862 were of such doubtful constitutionality that they were weakly and irregularly enforced. Thousands of persons were arrested in the North without allowing the usual guarantees of personal liberty, and many of them were confined for long periods. Provost marshals exercised authority far north of the scene of hostilities, and sometimes claimed jurisdiction over civilians. Military tribunals were set up in places where otherwise the machinery of justice was in full operation. Newspapers were occasionally closed up in order to assert the supremacy of the Constitution and laws. The ordinary guarantees of free speech and a free press and personal liberty were often ignored.

Relations of Departments of Government.—In this enlargement of powers all departments of the Federal Government shared. Congress had never faced such massive problems. The appropriation bills swelled, the patronage of members was more than trebled. The Republican Senators in 1862 undertook to turn Secretary Seward out of the State Department, and Congress set up a harmful, if not an unconstitutional Committee on the Conduct of the War.

The President, on his side, had the appointment of every general officer in the army, besides a sudden increase in the civil service. On him fell the responsibility of final decision as to the movement of troops and the points of attack. He took upon himself also the function of declaring slavery abolished (*see* EMANCIPATION PROCLAMATION). His was the task of rejuvenating the Supreme Court, and the greater task of harmonizing the Cabinet officials. Lincoln was the first President since Jackson who appealed for support to the people at large, when Congress was against him.

The federal courts were the quiescent part of the Government during the Civil War; but as soon as it was over they began freely to exercise the power of holding acts of Congress unconstitutional, a power which had been seriously applied only in the one case of Dred Scott (*see*) in 1857; and found means to overset much of the reconstruction legislation. These contentions between the three great departments of government did not reduce the quantity of federal powers; there were enough to go around.

Survival of New Powers.—Nearly all the acquisitions of power made at that time as against the states have ever since been maintained, except the irregular arrests and tribunals which were condemned at the time by sound public sentiment. On the other hand the Federal Government at the end of the war found itself the guardian of four million people, whom it had called into being out of the ranks of bondmen, by the mailed fist, confirmed by the Thirteenth Amendment (*see*). From the days of General Butler's "contrabands" (*see* CONTRABAND, NEGRO) in 1861 till the end of the Freedman's Bureau (*see*) in 1869, the Federal Government took responsibility for the protection and future well-being of the negroes in the South. The problem was too hard; two additional constitutional amendments, the Fourteenth (*see*) and the Fifteenth (*see*), proved too little for the support of this vast governmental task. In fact, the Government never carried out its presumed intentions; it took no steps to educate the negroes as a mass, or to provide them with the land which was then so abundant and cheap, or to bring about an understanding with their former owners. The federal courts took the pith out of the amendments; and Congress, after a struggle of nearly twenty years, acquiesced.

The industrial progress of the United States since the Civil War has called for enlargement of federal action, so that in any case the powers of the Federal Government must have been enhanced; the Civil War, however, accustomed all sections and parties to a large measure of federal authority and prepared the way for such tasks as federal control of monopolies and a permanent tariff intended for other than revenue purposes. The Civil War thus hastened and facilitated a permanently powerful national régime.

See EXECUTIVE AND CONGRESS; PRESIDENT, AUTHORITY AND INFLUENCE OF.

References: J. F. Rhodes, *Hist. of the U. S.* (1895–1904), III–V; J. W. Burgess, *Civil War and the Constitution* (1901), II, ch. xxviii; J. K. Hosmer, *Appeal to Arms* (1907), ch. xiv, *Outcome of the Civil War* (1907), chs. i, iv, viii, xv, xvi; W. Whiting, *War Power under the Constitution* (1871); A. B. Hart, *National Ideals Historically Traced* (1907), ch. xiv; J. W. Draper, *Hist. of Am. Civil War* (1868–1870); J. Parker, *Constitutional Law* (1862).

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CLAIM ASSOCIATIONS FOR PUBLIC LANDS. Claim associations or land clubs were extra-legal frontier political organizations established by the pioneers of the Middle West for the protection of *bona fide* settlers on the public lands. The written constitutions, by-laws, or resolutions of the claim associations made provision for officers, fixed the amount of land which each settler could occupy, and determined the conditions upon which claims could be made and held. Moreover, the regulations of these associations became the basis of subsequent legislation relative to the disposition of the public lands. See PUBLIC LANDS AND PUBLIC LAND POLICY; PUBLIC LANDS, PREËMPTIONS OF; RURAL DIVISIONS, MINOR; TOWNS AND TOWNSHIPS. **References:** B. F. Shambaugh, "Frontier Land Clubs or Claim Associations" in Am. Hist. Assoc., *Annual Report* (1900), I, 67–84; *Hist. of Constitutions of Iowa* (1902), ch. iv; *Constitution and Records of the Claim Association of Johnson County* (1894).

B. F. S.

CLAIMS AGAINST STATES. The presumption is always that there is no common law right to sue a state of the Union; and the Eleventh Amendment of the Federal Constitution prohibits a citizen from suing another state. Hence claims on contract, or for services, or for torts, are not normally entertained against a state. The difficulty is remedied in a few states in one or other of the following ways.

Authorization of Suits.—Florida allows suits to be brought against the state. In 1912, an amendment was made to the Ohio constitution to the effect that suits for damages may be brought against the state, as against an individual. The only way to recover losses sustained from the state heretofore has been to get a bill through the general assembly granting relief. By the Washington constitution of 1889, the legislature is empowered to direct by law under what names and in what courts suits may be brought by individuals against the state.

Boards of Claims.—In Nevada, the governor, secretary of state, and attorney general constitute a board of examiners, to examine all claims against the state.

Formal Courts of Claims.—These are established in a few states, and are similar, in their general workings, to the federal court of claims (*see*).

Private Bills.—The usual method of adjustment is by bills sometimes for classes of claims, often for individual claims—an unequal and extravagant method.

See EMINENT DOMAIN; EXPENDITURES, STATE AND LOCAL; PUBLIC ACCOUNTS; STATE SOVEREIGNTY.

References: F. N. Thorp, *Federal and State Constitutions* (1909); Secretary of State of Ohio, *Ohio Constitution and Amendments* (1912); F. J. Stimson, *Federal and State Constitutions* (1908), Bk. III, § 322; N. Y. State Library, *Index of Legislation* (annual).

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CLAIMS, INTERNATIONAL

Private and International Claims.—A claim, in the technical sense of the word, as distinguished from a mere complaint, is a formal demand by one government upon another for redress of an injury committed by the foreign government or its citizens against the complaining government, its citizens or subjects. It is distinctly international, when the injury is done to the complaining government. Thus, the claim of the United States against Great Britain in the so-called "*Alabama*" cases was international inasmuch as the Government appeared in its own behalf, and, as far as Great Britain was concerned, the liability, if it existed, was international because it arose from the action or neglect of the British Government. Claims of citizens or subjects against citizens or subjects of another government are private claims and have no international standing. They become international only when officially recognized and prosecuted by the government of the claimant. As an example of a claim, private in its origin, may be cited the case of the United States *vs.* Venezuela, tried before the Permanent Court at The Hague in 1910, in which the United States Government espoused the case of the Orinoco Steamship Company, an American corporation, against Venezuela.

Origin of Claims.—Claims originate in many ways. Any illegal act or neglect of a legal duty on the part of a government or its citizens affecting a foreign government, its citizens or subjects may give rise to a claim, whether it be based upon contract, tort, denial of justice, or serious miscarriage of justice. A claim, international in its origin, is prosecuted by the injured government because it is the sole party interested. A private claim should be prosecuted by the individual claimant and recourse should only be had to his government when local remedies have been exhausted or when the remedies are non-existent or are so inadequate as to prevent the purposes of justice. It is a question of policy for the government to determine, after weighing all the circumstances of the case, whether it will present a claim either in its own behalf or in behalf of one of its citizens or subjects; and from that decision there is no appeal.

In general, it may be said that it is not the policy of the United States to espouse contract claims, because in going to the foreign country to engage in business the claimant has subjected himself in advance to the laws of the country and their local interpretation. The circumstances of a particular case, however, may be such as to cause the government to waive this objection. In the matter of tort, the general rule does not appear to be so strict, it being the policy of the government to intervene in tort cases if the circumstances permit, provided local remedies have been exhausted. Confiscatory breaches of contract are assimilated to torts.

In the matter of crimes against their citizens or subjects, governments are peculiarly sensitive, and in case of delay in investigation, prosecution, or punishment of the offenders, they usually bring the affair to the attention of the foreign government. A failure to take appropriate action may justify a demand on the part of their government for an indemnity.

Request for Official Action.—If the local remedies, judicial or administrative, have been exhausted without securing adequate redress, the government of the claimant then decides whether it will or will not espouse the cause of the claimant. If the claimant has not had an opportunity to present or to prosecute fully his case, and a denial of justice arises, or, if the proceedings are vitiated by fraud and there is a miscarriage of justice, or if the delays are so excessive as to amount to a denial of justice, the policy of the government is to espouse the cause. In these cases, however, good offices are first invoked, that is to say, the claimant's government calls the facts to the attention of the foreign government and requests an investigation.

Should the request not be effective, the claimant's government undertakes an investigation on its own account and for this purpose requires evidence of the entire transaction. It is usual to insist that a memorial be filed with the Department of State containing an accurate and detailed account of the facts and circumstances upon which the claimant bases his plea for intervention. The memorial must state the character of the injury suffered, whether to the person or property of the claimant, or both, the amount claimed and the principles which are invoked as the basis for the claim; the full name of the claimant; whether he is at the time of the filing of the memorial a citizen of the United States and, if naturalized, proof of such naturalization. He must also show whether his interest was as sole claimant at the time of the origin of the claim, or if other parties hold interests, the circumstances under which they arose. The evidence accompanying the memorial must be in writing and under oath administered by a person duly authorized for such purpose according to the laws of the country in which the testimony is taken. The depositions and all other evidence should conform to the requirements usual in cases before ordinary courts. Documentary evidence ordinarily forms the greater part in international claims. If original documents are produced, they must be identified as such. Certified copies are, however, usually submitted. All documents, correspondence, etc., in a foreign language must be accompanied by translations.

Espousal of Private Claims.—The memorial, accompanied by the documentary evidence, is then submitted to and passed upon by the proper officers of the Department of State. The action of these officials is judicial, and a favorable recommendation will not be made unless a *prima facie* case is made out. When a favorable decision has been reached, the determination of the Government is communicated to the foreign government through diplomatic channels, with the request that the claim be examined by the foreign government and appropriate redress made. The private claim has now become official. It is customary for the foreign government to present a detailed reply, either accepting or denying responsibility. If accepted, the form of redress is agreed upon; if denied, the claimant's government then decides whether it will continue its support and insist upon the settlement of the claim. Frequently claims are dropped at this stage because the Government of the United States, after consideration of the reply, has satisfied itself that further action would not be justified. If, however, the Government is satisfied with the justice of its claim, it presents it again, and if the foreign government still refuses redress, arbitration is usually proposed. If this proposal is not accepted, the only recourse is force, which, however, is, fortunately, of infrequent occurrence.

Payment.—If the settlement of the claim of a citizen of the United States against a foreign government results in the payment of damages, the money is paid to the Department of State, in trust for the claimant. If there are several claimants, the money is held by the Department in trust for those who shall show themselves entitled to it. If the claimants prove to the Department the validity of their title, the money is paid accordingly. If, on the contrary, an agreement is not reached, judicial proceedings are necessary to settle conflicting titles, and the Department continues to hold the money until such proceedings have been completed.

Where claims are brought against the United States and it has become obligated to the payment of a money indemnity, whether as the result of diplomatic negotiation, arbitration or otherwise, the Department of State submits to Congress a statement of the facts and requests an appropriation to meet the obligation.

See Comity, International and State; De Facto Government; Drago Doctrine; Ex-

PULSION; INTERVENTION; PROTECTION TO AMERICAN CITIZENS ABROAD; SHIRT SLEEVE DIPLOMACY; STATES, EQUALITY OF; diplomatic relations with countries by name.

References: J. B. Moore, *Digest of Int. Law* (1906), § 970–1063; J. H. Ralston, *Int. Law and Arbitral Procedure* (1910); "The Law of Claims against Governments" in *House Reports*, 43 Cong., 2 Sess., No. 134 (1875).

JAMES BROWN SCOTT.

CLARK, GEORGE ROGERS. He was born in Albemarle County, Virginia, November 19, 1752, and died February 18, 1818. It was mainly through his influence that the claims of the Transylvania Company to extensive tracts of land south of the Kentucky River were annulled and that Kentucky was granted a separate county organization by Virginia. After the capture of Kaskaskia, courts of civil judicature resembling the county courts of Virginia, with judges elected by the people, were, by his orders, established in the French villages. The right of appeal was reserved to Clark himself. Returning to Kaskaskia after the capture of Vincennes, he inaugurated, May 12, 1779, the new government for Illinois, which had been instituted the preceding November by the Virginia legislature. As county lieutenant, John Todd, Jr., carried out the provisions of the act, receiving material assistance from Clark. Through his conquests the claim of the United States to the Northwest Territory was secured. In 1783 he was appointed one of the board of commissioners to apportion 150,000 acres of land, situated in the southern part of the present Indiana, which had been granted by Virginia to the Illinois regiment. He served as a member of that commission until 1813. See NORTHWEST TERRITORY. References: R. G. Thwaites, *How George Rogers Clark Won the Northwest* (1903), 1–71; W. H. English, *Conquest of the Northwest* (1897); J. A. James, "George Rogers Clark Papers" in *Illinois Hist. Collections* (1913).

J. A. J.

CLASSIFIED SERVICE. A term which in popular usage applies to that part of the public service appointment subject to competitive examination under civil service laws. Strictly speaking it applies to all positions subject to the civil service rules. Originally it signified the positions in the federal service which had been graded or classified according to salaries, and to which the civil service rules established under the act of 1883 were first applied (*see* PENDLETON ACT). Under all civil service laws in force in this country the positions are divided into the classified and unclassified services; and the classified service is subdivided into classes based on the character and duties of the positions. See APPOINTMENTS TO OFFICE; CIVIL SERVICE EXAMINATIONS; CIVIL SERVICE, FEDERAL; CIVIL SERVICE, STATE. References: U. S. Civil Service Commission, *Reports*; State and Municipal Civil Service Commissions, *Reports*; C. R. Fish, *Civil Service and the Patronage* (1905).

E. H. G.

CLAY, HENRY. Henry Clay (1777–1852) was born in Hanover County, Va., April 12, 1777. He was admitted to the bar in 1797, and the same year removed to Kentucky. He was a member of the state constitutional convention of 1799, and in 1803 sat in the lower house of the assembly. In 1806–07, though not of legal age, he was chosen to fill the unexpired term of John Adair in the United States Senate; returned to the assembly in 1808–09, and in 1810–11 was again in the United States Senate. In 1811 he entered the House of Representatives, where he sat until 1821 and from 1823 to 1825, serving as Speaker from 1811 to 1814, 1815 to 1820, and 1823 to 1825, and he was the first to develop the unwritten power of that office. He advocated an "American system" (*see*) of protection and internal improvements, and became the recognized leader of the young Republicans. He favored war with England in 1812, and was one of the negotiators of the treaty of Ghent in 1814. In the election of 1824 his influence insured the choice of Adams, but his acceptance of the office of Secretary of State led to the charge of a "corrupt bargain." His chief prominence as Secretary was in connection with the Panama Congress. From 1831 to 1842 he was a member of the Senate, a sturdy opponent and enemy of Jackson, an ardent advocate of a national bank, and author of the compromise tariff of 1833. In 1832 he was the candidate of the National Republicans for the presidency, with a platform whose chief plank was the bank issue. He unsuccessfully sought the Whig nomination in 1840 and in 1841 held the bulk of the Whig party together, in opposition to President Tyler. He was again nominated in 1844 and narrowly defeated by Polk, chiefly on the issue of the annexation of Texas. In his final service in the Senate he brought about the Compromise of 1850. He died at Washington, June 29, 1852.

See COMPROMISE OF 1850; NATIONAL REPUBLICAN PARTY; WHIG PARTY.

References: H. Clay, *Writings* (various editions); C. Schurz, *Henry Clay* (1887); C. Colton, *Life and Times of Henry Clay* (1846), *Last Seven Years of the Life of Henry Clay* (1856); D. Mallory, *Life and Speeches of Henry Clay* (1843); J. M. Rogers, *True Henry Clay* (1904); H. B. Fuller, *Speakers of the House* (1909), ch. i; M. P. Follett, *Speaker of the House* (1896).

WILLIAM MACDONALD.

CLAY WHIGS. The majority of the Whigs in Congress during Tyler's administration 1841–1844, who followed Clay in his opposition to the President. See CLAY, HENRY; CORPORAL'S GUARD; WHIG PARTY.

O. C. H.

CLAYTON, JOHN MIDDLETON. John M. Clayton (1796–1856) was born at Dagsborough, Md., November 24, 1796. In 1819 he was admitted to the bar, and began practice at Dover, Del. In 1824 he entered the state legislature, and from 1826 to 1828 was secretary of state of Delaware. He was chosen United States Senator in 1828, being reëlected in 1835, and strongly opposed Jackson. In December, 1836, he resigned his seat, and was shortly appointed chief-justice of Delaware, holding that office until August, 1839, when he resigned. In 1845 he was again elected to the Senate, and in 1849 was made Secretary of State. His principal achievement in this office was the negotiation of the Clayton-Bulwer treaty of 1850 with Great Britain. On the death of President Taylor he resigned his office, and retired to private life; but he was again elected to the Senate in January, 1853, by a combination of Whigs and Democrats, and was a member of that body at the time of his death, at Dover, November 9, 1856. See CLAYTON-BULWER TREATY. **References:** J. P. Comegys, *Memoir of John M. Clayton* (1882); I. D. Travis, *Hist. of the Clayton-Bulwer Treaty* (1900). W. MACD.

CLAYTON-BULWER TREATY (1850). The Clayton-Bulwer treaty was the historical product of anomalous conditions resulting from many forces long in operation. Primarily, it was made with a view to the construction of a canal under the treaty made by Hise with Nicaragua in 1849 and was intended by the United States to prevent a British protectorate over the Mosquito Indians (*see* MOSQUITO QUESTION). The British occupation of Greytown in 1848 also induced the United States to enter an earnest protest. The threatening aspect of relations resulting therefrom led to negotiations between Secretary Clayton and Sir Henry Bulwer the British Minister, for adjustment in 1850.

The resulting treaty guaranteed the protection and neutrality of the proposed Nicaragua canal; and agreed to extend a like protection to any other practical communication, either by canal or railway, across the isthmus at any point. In order to quiet the apprehensions of Clayton's colleagues in the Cabinet, Bulwer signed a separate statement denying the intention of the British government to use the Mosquito protectorate to secure a foothold on the isthmus.

The treaty, reluctantly signed by Clayton on April 19, 1850, was ratified by the Senate without alteration by a vote of 47 to 11. In exchanging ratifications, on July 4, Bulwer, added a declaration authorized by his government denying the application of the treaty provisions to Honduras and its dependencies. This was accepted by Clayton who put in a counter-declaration neutralizing some objectionable features. Both understood that these declarations could not legally affect the treaty, which both were anxious to save in the interest of peace. The treaty precipitated many questions and remained in full force till abrogated by the Hay-Pauncefote treaty of 1902.

See CANAL DIPLOMACY; GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; NICARAGUA CANAL POLICY.

References: G. P. Garrison, *Westward Extension* (1906), ch. xviii; J. B. Henderson, *Am. Dipl. Questions* (1901), ch. iv; L. M. Keasbey, "Clayton-Bulwer Treaty" in Am. Acad. Pol. Sci., *Annals*, XIV (1899), 285–309, *Nicaragua Canal and Monroe Doctrine* (1896); J. H. Latané, *U. S. and Spanish Am.* (1900), ch. iv; J. B. Moore, *Digest of Int. Law* (1906), V; E. Smith, *England and Am. after Independence* (1900), ch. xix; I. D. Travis, *Clayton-Bulwer Treaty* (1900). J. M. CALLAHAN.

CLEAN SWEEP. The wholesale removal by an incoming administration of the appointive government officials belonging to the defeated party. See SPOILS SYSTEM. O. C. H.

CLEARING HOUSE. A clearing house is primarily a central agency of banks whereby they may quickly settle their mutual indebtedness. At this agency, managed by representatives of the banks, all accounts and claims are presented and compared, thus making it possible to settle by the payment of balances instead of by the older method of individual payment to each and every creditor bank by each and every debtor bank through messengers and porters. The first clearing house was established in New York in 1853, and the second in Philadelphia in 1858. Practically every city having several banking institutions has now adopted this agency. In 1910 the total clearings (*i. e.*, the total of differences balanced) of all the clearing houses of the United States amounted to 164 billion dollars, of which 97 billions, or about two-thirds, was cleared in New York City. In New York the percentage of balances to clearings is only about five per cent, showing the economy of this system of settling exchanges.

The clearing house has assumed other functions, as for example, in fixing uniform rates of exchange; interest rates; collection charges; mutual assistance of members; and the issue of clearing-house loan certificates in times of financial panic. These latter represent temporary loans based upon the deposit of collateral securities made by the banks collectively associated in the clearing house to members, in times of monetary stringency, in order to save the use of cash which can thus be released to meet commercial demands. In addition, there are clearing house certificates based upon the deposit of gold, used in ordinary times in effecting the settlement of balances in order to minimize the risk and labor involved in handling large sums of money.

See BANKING METHODS; BANKING, PUBLIC REGULATION OF; BANKS AND BANKING ACTS, NATIONAL; BANKS AND BANKING ACTS, STATE; BANKS, CENTRAL; CLEARING HOUSE LOAN CERTIFICATES.

References: A. K. Fiske, *Modern Bank* (1905), 63–84; H. White, *Money and Banking* (4th ed., 1911), 216–231; J. G. Cannon, *Clearing Houses* (1900 and 1910); *Sen. Docs.*, 61 Cong., 2 sess., No. 491 (1911).

DAVIS R. DEWEY.

CLEARING HOUSE LOAN CERTIFICATES. Certificates issued under the authority of a clearing-house against securities and bills receivable deposited by a bank (belonging to the association) to be used in lieu of cash in settling balances at the clearing house. They have been issued only in times of monetary crises when banks found it difficult to meet their obligations. See CLEARING HOUSE. **References:** H. White, *Money and Banking* (3rd ed., 1908), 224–229; J. G. Cannon, *Clearing-Houses* (1900 and 1910); A. P. A. Andrew, "Substitutes for Cash in the Panic of 1907" in *Quart. Journ. Econ.*, XXIII (1908), 516.

D. R. D.

CLERK OF THE HOUSE OF REPRESENTATIVES. The Clerk of the House of Representatives is chosen by *viva voce* vote at the beginning of each Congress, and continues in office until his successor is elected and qualified. He keeps the journal of the House, in which he enters a record of the daily business of the House, of the results of all deliberations, of the yea and nay votes, and of all questions of order and decisions; performs a variety of functions in connection with the introduction and passage of bills and resolutions; and takes the lead at the organization of a new House, pending the choice of a Speaker. See CONGRESS; HOUSE OF REPRESENTATIVES; JOURNALS OF LEGISLATIVE BODIES.

A. N. H.

CLEVELAND

Population.—According to the census of 1910, Cleveland, Ohio is the sixth city in point of population in the United States, having 560,663 inhabitants.

Charter History.—The first permanent settlement on the site of the present city was made in 1796, the place was incorporated as a village in 1814 and was granted a city charter in 1836. The village charter of 1814 and the first city charter were special acts of the legislature. The Ohio constitution of 1851 forbade special acts conferring corporate powers and required the legislature to "provide for the organization of cities and incorporated villages by general laws." In 1852 the legislature passed the first general municipal incorporations act in the United States. This act provided for two classes of cities and the courts held that laws applying to all the cities of a class were general laws within the meaning of the constitution (*see* CITIES, CLASSIFICATION OF). The state legislature, taking advantage of this and other favorable decisions, made greater and greater refinements of classification until by 1878 the five leading cities were in classes by themselves and by 1898 every city of any importance had a class of its own. Thus the system of special city charters was reintroduced under the guise of general laws applying to all the cities of a class.

From 1852 to 1891 Cleveland had a decentralized scheme of government conducted mainly by elected and appointed boards. In 1891 the city was granted a charter which established what was widely known as the "federal plan." This received favorable comment from many authorities on city government and was satisfactory to the people of Cleveland. However, in 1902, the supreme court withdrew its approval of the classification of cities then prevailing and rendered invalid practically the entire system of municipal government in Ohio. As a result of this action a special session of the legislature enacted the uniform municipal code of 1902.

The code of 1902 divided municipalities into cities and villages and established a uniform scheme of government for each. This rigid system proved a great inconvenience to cities of all sizes; the powers granted were inadequate, and the legislature continued to tamper with the code for political and factious reasons. To relieve the cities from these difficulties the constitutions of Ohio was amended in 1912 so as to provide for municipal home rule. This amendment grants authority to any municipality to frame, adopt, or amend a charter for its government, under which it may exercise all powers of local self government. A city may proceed to frame a charter only after the proposition to do so has been submitted to the voters and approved by a majority of those voting on the question. On the same ballot are placed the names of candidates for a commission, by which a charter is prepared and submitted to the voters in case the proposition to frame a charter is approved. Acting under the home rule amendment the voters of Cleveland approved the proposal to frame a charter and chose a charter commission. The charter drafted by this commission was adopted at a special election held on July 1, 1913, being the first charter framed and adopted under the Ohio home rule amendment.

Election Provisions.—The Cleveland charter 1913 provides for the election of only the mayor and members of the council. Candidates for these offices are nominated by petition; 2500 voters may nominate a candidate for mayor and 200 voters of a ward may nominate a candidate for the council. Ballots used at the election have no party mark or designation. The names of candidates are printed in rotation under the title of the office which they seek. The preferential system of voting is used whereby a voter may express his first, second, and other choices of the candidates for each office. Elected officers may be recalled. Upon petition of 5,000 voters an election must be held to determine whether the mayor shall continue in office. A similar election may be invoked against a councilman by 600 voters of his ward.

The City Executive.—The executive and administrative powers of the city are concentrated completely in the hands of the mayor. Six departments are established by the charter, viz., law, public service, public welfare, public safety, finance, and public utilities. At the head of each department is a director who is appointed, and may be removed, by the mayor. Heads of divisions within departments are known as commissioners. They are appointed and may be removed by the heads of their respective departments, but they may be brought under the merit system if the civil service commission so orders. Neither directors of departments nor commissioners are appointed for a definite term. The entire executive service of the city, except as above indicated, with the addition of a few secretaries and confidential assistants, is under the merit system. The three civil service commissioners are appointed by the mayor for a term of six years, one member retiring every second year.

The financial administration of the city is concentrated in a department of finance with divisions of accounts, treasury, assessments and licenses, and purchases and supplies. As a check upon the financial officers appointed by the mayor, the council is required to establish a system of continuous audit, conducted by certified public accountants appointed by and responsible to the council. The books of the city are also audited by inspectors responsible to the state auditor. The department of public welfare administers the affairs of the city relating to health, charities and corrections, recreation and employment. There is also a division of research and publicity in this department, which is required to investigate the causes of poverty, crime and disease and by means of lectures, exhibits, and other methods "promote the education and understanding of the community in those matters which concern the public health and welfare."

The department of public utilities has the administration of all non-tax supported public utilities that are owned and operated by the city. The accounts of such utilities must be kept distinct from all other accounts of the city, and the revenues of any such utility cannot be appropriated or used for any other object or purpose. The department of public service has charge of the more important public works of the city such as the construction and maintenance of streets, sewers, wharves, docks, landings, markets, parks, and public grounds. It is also responsible for work involving engineering or construction done for other departments. Through its division of franchises this department requires privately owned and operated public utilities to observe their obligations to the city. The department of public safety has divisions dealing with police, fire protection, buildings, housing, and weights and measures.

The Council.—The council consists of twenty-six members, one being chosen from each of the wards into which the city is divided. The term of councilmen is two years and all retire at the same time. The council chooses its presiding officer, clerk and other officers and employees. Ordinances passed by the council may be vetoed by the mayor but may be repassed by a two-thirds vote. A proposed ordinance may be initiated by petition of 5,000 voters, and any ordinance passed by the council may be subjected to a referendum upon petition of ten per cent of the voters (*see* INITIATIVE; REFERENDUM). The mayor and directors of departments are entitled to seats in the council, but may not vote therein. The mayor may introduce ordinances and take part in any discussion accurring in the council. Directors of departments may take part in discussions relating to their respective departments. The council has all the legislative power of the city and in addition has broad powers to investigate official acts and transactions of other departments.

Financial Powers.—The council prepares an annual appropriation ordinance, basing it upon a detailed estimate submitted by the mayor. Provision must be made for public hearings on appropriation ordinances before their passage. The mayor may veto items in appropriation ordinances but such items may be reinstated by a two-thirds vote of the council. Limits of taxation and indebtedness are established by law. The maximum rate of taxation permitted to cities is five mills on each dollar of assessed valuation, unless by a vote of the electors a higher maximum tax is authorized for a period not exceeding five years, but in no case may the total tax for all purposes (state, county, city school, etc.), exclusive of that for sinking funds, exceed fifteen mills. Cities in Ohio may not incur debt in excess of four per cent of the assessed valuation of property unless the issue of bonds for additional indebtedness is approved by two-thirds of the electors voting at the election at which the question is submitted. Indebtedness can in no case exceed eight per

cent of the assessed valuation. Bonds issued to be paid from special assessments and water works bonds are excluded from this limit. The total debt of Cleveland (1912) is $34,787,228. Exclusive of the amount in the sinking fund ($1,577,818) and the water works bonds ($6,484,089) the debt is $26,725,320. This estimate does not include the school debt nor $2,000,000 of bonds authorized by popular vote in 1911 and not yet entirely issued.

Public Utilities.—Ohio cities are authorized to own and operate any public utility. The water system of Cleveland has never been in private hands, the city plant having been established in 1856. About one-fourth of the water pumped is supplied to suburban towns. The city also owns two small electric lighting plants acquired with annexed villages. In November, 1911, a bond issue of $2,000,000 was voted by the electors for the extension of the municipal electric lighting system. The city garbage disposal plant has been operated by the city since 1905 and disposes of the kitchen refuse more efficiently and at far less cost than under the contract system. Ashes, waste paper and rubbish are also collected by the city. Street railways are operated under a franchise by which the company is restricted to a guaranteed return of six per cent upon an agreed valuation plus future investments as specified in the franchise. The city council is given control of the operation, extension and improvement of the system and maintains its oversight through a commissioner, appointed by the mayor and approved by the council. The rate of fare, under this ordinance, has not yet risen above three cents with a penny charge for a transfer. The fare is now (1913) three cents without charge for transfer.

Municipal Court.—Cleveland has a special municipal court of seven judges elected for a term of four years. This court, established in 1911, has all the criminal jurisdiction of justice of the peace and police courts and a fairly broad civil jurisdiction designed to render prompt and economical service to the smaller litigant and to relieve, in some measure, the court of common pleas.

Schools.—The school authorities of Cleveland are practically independent of the eity government, except that the director of law is counsel for the school board and that the city treasurer is custodian of the school funds. The board consists of seven members, two elected from districts and five at large. Members are chosen for four years, either three or four retiring every second year. Nominations for the board are by petition and the election ballot has no party designation. The board has independent power of taxation, elects a superintendent of schools for a term of five years and a director of schools who has charge of the business administration. It also chooses the seven library trustees who have full control of the public library and its branches.

See Cabinet System in City Government; Charters, Municipal; City and the State; Cities, Classification of; Cities, Legislation and Legislative Problems in Cities; Mayor; Municipal Government; Officers in City Government; Police.

References: *Ohio Constitution*, Art. XVIII; *Charter of Cleveland* (July 1, 1913); S. P. Orth, *Hist. of Cleveland* (1910), I, chs. viii–xvi, xxi–xxvii; C. S. Williamson, "Finances of Cleveland" in *Col. Univ. Studies*, XXV (1907), No. 3, 17–59; D. F. Wilcox, "Munieipal Govt. in Michigan and Ohio" in *ibid* V (1896), No. 3, *Municipal Franchises* (1911), J. A. Fairlie, *Essays in Municipal Administration* (1908), ch. v; W. H. Ellis, *Municipal Code of Ohio* (4th ed., 1909), Introduction, II, eh. xxv; *General Code of Ohio* (1910), 3497–4784; *102 Laws of Ohio* (1911), 266–274 (tax limit law), 520–524 (initiative and referendum).

A. R. Hatton.

CLEVELAND, (STEPHEN) GROVER. Grover Cleveland (1837–1908), twenty-second and twenty-fourth President of the United States, was born at Caldwell, N. J., March 18, 1837. In 1859 he was admitted to the bar at Buffalo, New York. From 1870 to 1873 he was sheriff of Erie County, and in 1881 was elected mayor of Buffalo as a Democrat, but with large independent support. In 1882 by a large majority he was elected governor of New York, a state usually Republican, and won a national reputation by his courage and independence. In 1884 he was elected President by the deciding vote of his state, receiving 219 electoral votes against 182 for Blaine. His administration was notable for his support of civil service reform, vetoes of numerous private pension bills, and advocacy of immediate tariff reduction, which latter he made the issue for his party in the election of 1888. But he was defeated by Harrison, although he received the larger popular vote. In 1892 he was again elected President, receiving 277 electoral votes against 145 for Harrison. His second term was notable for his withdrawal of the Hawaiian annexation treaty from the Senate, his insistence upon the maintenance of the gold standard, his use of federal troops to suppress the Chicago riot in 1894, and his vigorous message in December, 1895, regarding Venezuela. As years went by received the admiration of his party and of his opponents. He died at Princeton, N. J. June 24, 1908. He wrote *Presidential Problems* (N. Y., 1904). See Civil Service, Relation of, to Parties; Democratic Party; Great Britain, Diplomatic Relations with; Silver Coinage Controversy; Tariff Policy of the United States. References: J. L. Whittle, *Grover Cleveland* (1896); R. W. Gilder, *Grover Clevcland* (1910); E. E. Sparks, *National Development* (1907); D. R. Dewey, *National Problems* (1907). W. MacD.

CLIMATE. Climate is the sum of the weather, or the average weather, of a region. Weather is temporary and may be exceptional. Climate expresses the more permanent conditions, which, on the whole, characterize a region. Moisture and aridity, heat and cold, with types of atmospheric movement, are the chief descriptive features by which a given climate is known. Climate is the dominant factor in the genesis of the products of the soil and its effects on the life of man are beginning to be the objects of research. **See** Physics and Politics; Physiography of North America; Resources of North America. **References:** Julius Hann, *Handbook of Climatology* (2d ed., trans. by R. DeC. Ward, 1903), (3d ed. in original, 1908); R. DeC. Ward, *Climate, Considered Especially in Relation to Man* (1908); W. M. Davis, *Elementary Meteorology* (1894); W. L. Moore, *Descriptive Meteorology* (1910). A. P. B.

CLINTON, DeWITT. DeWitt Clinton (1769–1828) was born in Ulster County, N. Y., March 2, 1769. From 1790 to 1795 he was secretary to his uncle, Governor George Clinton. He was a member of the assembly in 1798, and of the state senate from 1799 to 1802, being also a member for a time of the council of appointment. He was elected United States Senator in 1802, through the influence of the Tammany Society; was mayor of New York in 1803–7, 1808–10, and 1811–15; state senator 1806–11; and lieutenant-governor 1811–13. His strong partisanship made him for a time a leader of the Republican faction known as the "Clintonians"; but eventually he lost the support of Tammany, and was often in opposition to Jefferson. In 1812 he was the candidate of the Federalists and peace Republicans for the presidency, receiving 89 electoral votes against 128 for Madison. Since 1809 he had urged the construction of a canal from the Hudson to the Great Lakes, was elected governor in 1817 largely on that issue, and from 1816 to 1824 was canal commissioner. The opening of the Erie Canal in 1825 brought his public honor, and from 1824 to 1827 he was again governor. He died at Albany, February 11, 1828. **See** Clinton's Ditch; Democratic-Republican Party; Erie Canal. **References:** D. Hosack, *Memoir of De Witt Clinton* (1829); W. W. Campbell, *Life and Writings of DeWitt Clinton* (1849); J. D. Hammond, *Hist. of Pol. Parties in the State of N. Y.* (4th ed., 1846). W. MacD.

CLINTON, GEORGE. George Clinton (1739–1812) was born at Little Britain, N. Y., July 26, 1739. He became a member of the lower house of assembly in 1768, was elected a member of the Continental Congress in 1775, and served with his brother, James Clinton, at the defence of Forts Clinton and Montgomery, October 6, 1777. In April, 1777, he was elected first governor of New York, an office which he held by successive elections until 1795. He was opposed to the adoption of the Federal Constitution, although he was president of the state convention which ratified it; and he became the leader of the New York Anti-Federalists, as later of their successors, the Republicans. He received three electoral votes for the presidency in 1789, fifty in 1792, and seven in 1796. From 1801 to 1804 he was again governor, but his refusal to make removals for political reasons won him the hostility of his party. In 1804 he was elected Vice-President with Jefferson, and was reëlected in 1808 with Madison, receiving also three votes for the presidency. His casting vote in 1811 prevented the recharter of the Bank of the United States. He died at Washington, April 20, 1812. **See** Democratic-Republican Party. **References:** George Clinton, *Public Papers* (1899–1904); DeA. S. Alexander, *Pol. Hist. of the State of N. Y.* (1906), I. W. MacD.

CLINTON'S DITCH. The Erie Canal was called, by way of ridicule, Clinton's Ditch or "the big ditch," during the construction of the canal 1817 to 1825. DeWitt Clinton (*see*) had specially advocated the canal. O. C. H.

CLOSE SYSTEM. See Party System in Doubtful States.

CLOSURE. This term, from the French *clôture*, is employed to describe the methods of parliamentary procedure by which debate on a pending measure may be brought to a close and the question immediately put to a vote. Of the methods of closure the most important is that known as the "previous question" (*see*), commonly used in the United States. The previous question occupies no place, however, in the parliamentary procedure of the United States Senate, where, on account of its smaller size, it has not been found necessary to limit the right of debate. Although an old institution in the procedure of the House of Commons, it was not extensively used for the purpose of closing debate until after 1880, when the obstructive tactics of the Irish Nationalists under Parnell led to its adoption as a means for overcoming their obstruction. The present rule, adopted in 1902, provides that when a question has been proposed a member may move that the question now be put and unless it shall appear that the motion is an abuse of the rules or an infringement of the rights of the minority the question shall be put forthwith and decided without debate or amendment. Somewhat analogous to the closure is the "guillotine" first employed in the House of Commons in 1887 as a means of shutting off debate on a great complex measure (the Irish Crimes Act) when the closure was ineffective. When twenty-seven days had been

consumed in debate on four out of the twenty clauses of the bill, the government moved that at the end of the following week, the chairman should without further debate put all questions necessary to end the committee stage. The motion was adopted and it proved effective. On account of the severity of the process it came to be known as the "guillotine." The method of "closure by compartments" was introduced in 1893 in connection with the Home Rule Bill, by the adoption of a rule providing that on a specified date debate on certain clauses should cease, that on another date discussion of certain other clauses should end, and so on to the end. See CABINET GOVERNMENT IN ENGLAND; RULES OF CONGRESS; RULES OF LEGISLATIVE BODIES. **References:** L. S. Cushing, *Law and Practice of Legislative Assemblies* (1907), §§ 1404–1436; A. L. Lowell, *The Government of England* (1908), I, ch. xv; T. E. May, *Parliamentary Practice* (11th ed., 1906), 283–284; A. C. Hinds, *House Manual* (1909).

J. W. G.

COAL LANDS. The first act specifically dealing with coal lands in the public domain was that of July 1, 1864, which fixed the minimum price at $20.00 an acre. This was reduced, in 1873, to $10.00 where the land lay more than fifteen miles from a completed railroad. Individuals are limited to 160 acres, but associations can enter 320, or, after an expenditure of $5,000 in development, 640 acres. The price of the more valuable lands is fixed after field examination. Of late, as part of an attempt to conserve the remaining resources of the public domain for the general good, Congress has been asked to provide for the lease or sale of coal deposits, without rights to the soil, subject to various regulations. Pending legislation, almost 83,000,000 acres of coal lands were withdrawn from entry up to November 1, 1910. The act of June 22, 1910, provided for the entry of coal lands as agricultural land, with a reservation to the United States of the coal in such lands and the right to prospect for, mine, and remove the same. The coal land laws were extended to Alaska in 1900, and in 1904 a flat rate of $10.00 an acre was fixed there. The act of May 28, 1908, permits the consolidation of claims located in good faith up to 2,560 acres of contiguous land, but also contains a strong anti-monopoly clause. The value of certain groups of claims and alleged fraudulent methods of acquisition aroused public interest and led to a thorough congressional investigation of the Department of the Interior, and of the Forest Service in 1910. Since the executive order of November 12, 1906, no lands in Alaska have been subject to entry under the coal-land laws. Entries, 1873–1910, 544,244 acres, $8,448,318. See CONSERVATION; MINES AND MINING, RELATION OF GOVERNMENT TO; PUBLIC LANDS. **References:** U. S. General Land Office, *Coal Land Laws and Regulations Thereunder*, (1908); National Conservation Commission, *Report*, 1909, III, 417–421, 426–442; C. R. Van Hise, *Conservation of Natural Resources* (1910), 35–44.

P. J. TREAT.

COALING STATIONS. Before the conquests of 1898 the United States made repeated efforts to secure foreign coaling stations, especially in the West Indies and the Pacific Ocean. In 1842 Congress authorized the Secretary of the Navy to establish such stations wherever he thought necessary. In the West Indies, the harbor of St. Nicolas was leased from Hayti during the Civil War, but a renewal was refused in 1891. Successive administrations made unsuccessful attempts to obtain Samana Bay from San Domingo. In the Pacific, Pago-Pago was secured from Samoa (*see*) by the treaty of 1878, and Pearl Harbor from Hawaii (*see*) by the treaty of 1884. Both came under American sovereignty in 1898–1899.

In Cuba, the United States obtained by treaty in 1903, "complete jurisdiction and control" over certain areas at Guantanamo and Bahia Honda, for coaling stations, for which it pays the Cuban Government an annual rental of $2,000. The Navy Department has coal depots in Yokohama, Japan, and in Pichilinque Bay, Mexico. No form of government has been created for foreign coaling stations; they are under the administrative control of the Navy Department.

See ANNEXATIONS TO THE UNITED STATES; EXTRATERRITORIALITY; TERRITORY, ACQUIRED, STATUS OF. **References:** Secy. of the Navy, *Annual Report*, 1910, 29–39; J. B. Moore, 601, 610, 611; V, 866–7.

GEORGE H. BLAKESLEE.

COAST AND GEODETIC SURVEY. The Coast and Geodetic Survey collects and prepares, for publication, in the form of charts, coast pilots, tide tables, and notices to mariners, all information useful to navigators and relating to the coasts of the United States and to the coasts under the jurisdiction of the United States. The coasts of the United States have been surveyed for all the practical purposes of chart-making at the dates on which the work was completed, and the work now consists in perfecting this fundamental basis by such supplemental surveys as are necessary to define all natural changes and to indicate those due to river and harbor improvements, and also to meet the demands of commerce caused by the increased draft of vessels. Good progress has been made in charting the unsurveyed coasts of the Philippine Islands; slower progress has been made in Alaska; and the first survey in Porto Rican waters has been practically completed. The Coast and Geodetic Survey has also undertaken the work of surveying and marking the Canadian and Alaskan boundaries, and much work is con-

stantly being done within the states. The survey was directed by a superintendent, from 1903 to 1913 as a bureau of the Department of Commerce and Labor; and since March 4, 1913, has been a bureau of the Department of Commerce. See BOUNDARIES; COMMERCE, DEPARTMENT OF; WATER BOUNDARIES. **References:** Department of Commerce and Labor, *Annual Reports* (1903–1912); Department of Commerce, *Annual Reports;* Superintendent of Coast and Geodetic Survey, *Reports.*

A. N. H.

COAST DEFENSE, STRATEGIC PRINCIPLES OF

Fortification.—Fortifications barring the entrance of harbors are one of the elements of coast-defense, though they offer only local and tactical protection. For repelling invasion the action of a mobile force capable of strategic operations by sea or land is indispensable; and a fleet or an army is a factor in every comprehensive scheme of coast-defence. For England the navy is the first line of national defence; and all invasions over sea may be resisted on the same principle. But land frontiers have to be guarded by mobilized armies, operating from fortified bases and lines of communication. Forts (*see* FORTIFICATIONS) protecting arsenals and dock-yards secure the bases of a naval defensive armament, and thus serve the strategic plans of defense; but they are often located at commercial harbors. The coast line cannot be guarded by forts distributed on salient points to cover landing-places, since each work might be exposed to the concentrated fire of a fleet moving freely in open water. It is only where batteries can cross their fire over a narrow or obstructed channel to beat off the leading ships of an enemy's column that a harbor can be defended; and bombardment cannot be prevented unless the forts are miles to seaward of the cities likely to become targets. This fact, in connection with the growing distrust of submarine mines, may increase the number of undefended harbors, as soon as general acceptance of the rules of the Hague Conference which forbids their bombardment is assured. Strategic principles also forbid the division of the national forces into localized garrisons or flotillas for guarding the coast, and compel fleets and armies to maintain concentration and mobility.

System of Fortification 1794–1865.—Congress authorized the fortification of 18 harbors of the Atlantic coast in 1794; and $578,387. was thus expended in seven years. By the end of 1805 the expenditure was nearly a million. Larger sums were voted in 1809; but the War of 1812 showed that the coast was undefended, though certain harbors might repel the enemy.

The generation after the close of that contest supplied some of the defects of the system; and in 1840 it was reckoned that the forts had cost $11,023,465. By 1851 this figure had almost doubled; but experts found the coast still unguarded and proposed the construction of 157 works to protect the ports of the Atlantic and the Gulf. These were to cost $45,000,000, and $8,345,000 additional would be required to complete their armament of 12,685 guns. The Pacific coast needed $15,400,000 more. Though the advocates of strategical or naval defense made a good showing, this programme was carried on for the next decade; and the outbreak of the Civil War found the forts of the South nearly completed, though inadequately armed.

Those forts failed to justify the claims of their designers; they could not beat off the blockading fleet, and the strongest barriers were forced by Farragut's squadron at New Orleans and Mobile. Improvised earthworks gave better results in the South; and confidence was restored in northern cities by the hasty mounting of rified cannon to cover them from the raids of commerce destroyers.

Comprehensive System (1886–1912).—Little progress in the military arts was made for 20 years after the Civil War; and in 1886 the report of the Endicott board recognized the unfitness of American forts for a contest with armored ships and reported a project for the defense of 27 harbors at a cost of $93,448,000. This estimate included $37,965,000 for rifled guns to replace the cast-iron smooth-bores then mounted, and factories were to be created to supply the ordnance thus required. Funds were supplied in 1890, but progress was slow for some years. The alarms of the war of 1898 led to large appropriations for coast defense, accompanied by the eccentric distribution of naval forces for the same object; and by June 30, 1899, about two-fifths of the Endicott plan had been completed at an expense of $45,979,285. By 1906 this outlay totalled $72,750,584, not including $46,000,000 spent for arsenals and other adjuncts of coast defense.

The Endicott project was revised by the Taft board of 1906; and an estimate of $50,879,339 for completing the system was submitted, the fortification of cities on the Great Lakes and other items being omitted and works for closing Long Island Sound, Chesapeake Bay, and Puget Sound appearing in the estimates. About $20,000,000 has been applied on this project (1913); and the War Department no longer demands funds for the construction of new forts, though deficiencies in mines, searchlights, and fire-control apparatus are pointed out. In 1912 the Secretary of War and the

Secretary of the Navy urged Congress to provide for a Council of National Defenses with representatives from different branches of the public service.

Insular Protection.—The Taft board estimated the total cost of fortifying harbors in insular possessions at $20,000,000, of which $2,404,920 had been expended before 1906. During the next four years the appropriations were $11,824,852; and the estimate for completing the principal forts, those at Pearl Harbor in Oahu and Manila and Subic Bays in Luzon, was $3,828,929, most of which has since been provided. Funds for beginning the fortification of the naval station at Guantanamó, Cuba, are now included in the estimates. Fortifying the Panama Canal at an expense variously estimated between $20,000,000 and $12,500,000 was sanctioned by Congress in 1911, when the Sundry Civil Appropriation Bill allotted $3,000,000 for forts on the Isthmus. Garrisons for these works may require 25,000 men for Panama and 12,000 for the Philippines.

Garrisons.—The Coast Artillery can furnish only a third of the force required for the batteries of the home ports; and detachments of the militia are offered training as reserves. Of the 170 companies of the regular force 117 are assigned to batteries at home, 12 to those abroad, and 41 to the mine defence, to which 100 steamers and launches are attached. In European countries all submarine and floating elements of coast-defence are connected with the navy, which also works shore batteries in some countries.

Naval Aid.—The Endicott board had proposed to attach floating batteries and torpedo-boats to the defence of certain harbors at a cost of $32,000,000; but a system which would localize 450 officers and 7,000 seamen was not more acceptable to the Navy than the gunboat flotillas of 1807. The fleet has been developed on other lines, to take part in defending the coast by assuming a tactical offensive against squadrons engaged in convoy or bombardment. Even if it may not be able "to prevent the enemy's ships getting to sea far enough to do any mischief," which is the British war-plan, it can break a blockade and embarrass a landing as long as it remains "a fleet in being" capable of recovering the offensive. Destroyers and submarines have their place in such a programme, and are no longer to be dispersed or immobilized to pacify local alarms.

See Army, Standing; Fortifications; Military and Naval Expenditures; Naval Vessels; Navy Yards; Reserves.

References: A. Abeille, *Marine Française et Marines Étrangères* (1906), 299–319; C. S. Clarke, *Fortification* (1907), ch. xiii, 253–255, ch. xviii; R. F. Johnson, "Fortifications" in Royal United Service Institution, *Journal*, II (1908), 1260, 1374, 1545; A. T. Mahan, *Naval Strategy* (1911), 169–171, 293, 319–321, 428, 435; J. P. Wisser, *Tactics of Coast Defense* (1902), ch. vii–x, 11–15, 39–41, 51–53, 90–93; *Am. State Papers, Military* (1834), I, 62, 153, 193, 197; *ibid, Naval* (1834), I, 290, 685, II, 305; *House Reports*, 37 Cong., 2 Sess. (1862), No. 92, I, 58, 89, 138, 157, 203, Nos. 80, 86, 89, 138, 207, 225, 243, 252; *House Exec. Doc.*, 49 Cong., 1 Sess. (1886), 7, 10, 28; *Sen. Exec. Docs.*, 59 Cong. (1906), No. 249, 2, 10, 22, 42; *House Reports*, 59 Cong., 1 Sess. (1906), No. 757, 21, 4, 5; *ibid*, 61 Cong., 3 Sess. (1911), Nos. 1286, 1288; Cong. Record, 61 Cong., 1 Sess. (1911), 882, 1308, 2449–3460, 3478–3483; U. S. War Department, *Annual Reports, 1899–1903* (1904), 87, 124, 133, 156, 269–274, 355–358; *ibid* (1910), I, 30–35, 57, 58, 592, 660, 669, 681, 687, 699, 698–700 (1911), I.

C. G. Calkins.

COASTING TRADE. The coastwise passenger business is especially large on Long Island Sound and between New York and New England points generally; while several lines of large steamers carry both cabin and steerage passengers from New York to the South Atlantic and Gulf ports, and between Pacific coast cities from Puget Sound to San Diego. Freight tonnage consists of general merchandise or "package freight" of great variety which is handed by the line steamers; lumber, shipped in sailing vessels, steamers and seagoing barges; and coal, now carried mainly in ocean barges towed tandem in fleets of three.

The only available statistics of the trade along the seaboard are those compiled by the census for the years 1889 and 1906. During the latter year there were 78,662,000 tons of coastwise traffic, exclusive of about 80,000,000 tons moved from one point to another, within the several harbors. Five-sixths of the total coastwise traffic was along the Atlantic and Gulf seaboard and the remaining one-sixth along the Pacific.

The government regulation of coastwise shipping (*see* Seamen; Steamboat Inspection) is comprehensive and thorough. The only coastwise rates thus far brought under public control are those on through shipments by a combined water-and-rail route. The Interstate Commerce Commission has authority, by the act of June 18, 1910, to establish through rates by joint water and rail lines and to fix the maximum through rates over such routes. The Government aids coastwise shipping by exempting it from tonnage taxes; but, in order to protect the American shipbuilding industry, it has, since 1817, admitted only American-built ships to the coasting trade. The trade of the United States with Porto Rico and Hawaii is restricted to American shipping, but our commerce with the Philippines is still open to foreign ships.

See Lakes, Jurisdiction and Navigation of; Merchant Marine; Navigation Acts; Navigation, Regulation of; Pilotage; Reg-

istry of Shipping; Seamen; Shipping, Regulation of; Steamboat Inspection.

References: U. S. Bureau of the Census, *Report on Transportation by Water* (1906, 1908); Commissioner of Corporations, *Report on Transportation by Water in the United States,* 1909; E. R. Johnson, *Ocean and Inland Water Transportation* (1906); *Am. Year Book 1910,* 550, *ibid. 1911,* 563, and year by year.

Emory R. Johnson.

CODIFICATION

Definition.—The reduction of a body of law to succinct and systematic legislative form. When the legislative reform movement in Anglo-American law was at its height in the middle of the nineteenth century, there was a strong movement for codification both in England and in America. Discussions of codification were the staple of juristic controversy in England until about 1875 and in the United States until about 1890. Interest in the subject waned in England because of the rise of social legislation and because of the Judicature Act and the resulting sweeping reform of procedure. In the United States the crude and unsatisfactory draft codes prepared in New York created a prejudice against codification and interest waned likewise. Recently interest has revived in England and a new movement for codification is evidently setting in. In America the matter is still dormant; but it seems reasonably clear that a revival of interest must be expected and that codification will become one of the chief problems of American law in the near future.

Ancient Codes.—Legislation is a phenomenon of the maturity of law. In the first stage of legal development, law-making is subconscious; legislation is declaratory. It is an authoritative ascertainment and publication of what already exists in the form of tradition. When attempt is made to declare the custom of a political unit formed by the union of tribes or cities or kingdoms theretofore distinct, each with customs of its own, it becomes necessary to choose between conflicting traditions or to harmonize conflicting traditions through amendment. Ancient codes for the most part are either purely declaratory or else the result of such a choosing and harmonizing. Conscious constructive law-making comes when men perceive that they can change the law by changing the written record. When this is discovered, a legislative ferment results, as may be seen in the early republican legislation at Rome, the Frankish capitularies on the Roman imperial model, and perhaps the legislation of Edward I in England. But the idea of deliberate change is uncongenial to the earlier stages of legal development, and a brief outburst of legislation is followed by periods of purely judicial or juristic law-making.

Justinian's Codification.—The first codification of a developed body of law is the legislative restatement of Roman law under the auspices of Justinian, in the sixth century A. D. The ancient codes are generically distinct; they precede a period of legal development, summing up what has been evolved in the prelegal stage and turning the traditional materials into a definite body of law. Codes in the modern sense come after a long legal development; they simplify the form of developed law, systematize and harmonize its elements, and formulate its principles. But there is an analogy, in that each sums up a past development, and puts its results in form to serve as the basis for a juridical new start.

The maturity of Roman law was followed by a period of legislation, which, at first, as is always true in the maturity of law, was busied with the substance of the law. Presently legislative creative energy was spent and legislation turned to the form of the law. About the middle of the fourth century Gregorius and Hermogenianus made private compilations of Roman imperial legislation which were called codes, but were entirely analogous to such private publications in this country as the West Publishing Company's *United States Compiled Statutes.* In 429 the emperors Theodosius II and Valentinian III ordered an official code, which, published in 438 and known as the *Codex Theodosianus,* is simply an authoritative revision and compilation of Roman imperial legislation since Constantine, and is entirely analogous to the official revised statutes of one of our states.

In 528 Justinian conceived the project of republishing the whole body of existing Roman law in statutory form. The first step was to compile a new *codex* or revision of the statutes. This was done within a year, and in 529 the revision was enacted and all preëxisting legislation not incorporated therein was repealed. In 530 Justinian appointed a commission to compile and systematize the traditional element of the law. This work was done rather hastily in three years and the resulting *Digest* was given statutory authority in 533. In fifty books it digests all the Roman juristic writings, much as the *Century Digest* has digested American case law except that is arranged in the traditional order of the perpetual edict, instead of alphabetically, uses the very words of the author from whom each excerpt is taken, rather than a summary of his text, and gives but one extract for each point, since it is not an index to the law but an authoritative expression of the law. Changes in the law while the *Digest* was compiling required

corresponding changes in the Code. Accordingly a new edition was drawn up and enacted in 534, the old Code being repealed. Also, an institutional book, in reality a revised edition of Gaius, the great institutional book of the classical period, was prepared and given statutory authority in 533 under the name of *Institutes* of Justinian. The subsequent legislation of Justinian was brought together in an unofficial collection (not a compilation) which we call the *Novels*. It was no part of Justinian's republication of the law, but is part of the *Corpus Juris Civilis,* commonly spoken of as Justinian's codification. Obviously the work of Justinian's experts is not at all what we mean by codification to-day.

Beginnings of Codification in the Civil Law.—The next great codification is the *Constitutio Criminalis Carolina* of the emperor Charles V (1532). Roman criminal law was the least satisfactory part of the Roman legal system, and therefore a considerable development of criminal law was required in the countries which received the Roman law. The local penal law was crude, and the same unification was needed for that part of the law which the reception of Roman law had brought about upon the civil side. This penal code, the first of its kind, was enacted to bring about that result.

In the seventeenth century, Colbert, the minister of Louis XIV, devised a project for a general codification, and in the latter part of the century Roman-French law was codified to no small extent through royal ordinances. The next essay at codification took place in Prussia. Juristic theory in the eighteenth century held that universal principles of universal validity were discoverable through reason, and that these principles could be worked out into a complete and perfect body of rules which would meet the demands of every case. Accordingly such a perfect code was considered the goal of all juristic study. Impressed with this theory, Frederick the Great directed his chancellor to draw up a code. A draft of the first part was published in 1749, but was not enacted. In 1780 he ordered a new code, which was completed, and put in force after his death in 1794, and obtained down to the time of taking effect of the new German code in 1900.

Nineteenth Century Codification in the Civil Law.—Next in order of time is the celebrated *Code Napoléon*, or, as it is now called officially, French Civil Code. It was projected in 1800, and, after three drafts had been rejected, was put in force in 1804 through the personal intervention of Napoleon. It has been adopted in Belgium and Egypt and is the basis of codes in Holland, Spain, Portugal, Italy, Greece, Russia, Turkey, Roumania, Mexico, Chili, Quebec and Louisiana. It was copied in the Baden *Landrecht* of 1809, which was in force till 1900.

The next code which may be called original is the Austrian code, projected by Maria Theresa in 1713. A draft was completed in 1767, but rejected; part of a second draft was enacted in 1787; the whole was put in force in 1811.

A reaction against legislation set in on the downfall of the theory of a law of nature. The historical school, which was dominant during the greater part of the nineteenth century, was skeptical as to the efficacy of conscious law making, and opposed codification. Yet there were several projects for codes in the German states and a code was adopted in Saxony in 1862 and a uniform commercial code for all the German states was adopted 1862–1866.

Not till the last quarter of the nineteenth century did interest in codification revive. Then the legislative activity of the German Empire resulted in a new group of codes, represented by the civil code for the German Empire (1900); the Japanese civil and commercial codes; and the new Swiss code. The German civil code is the most thorough piece of legislation in legal history. The first commission was appointed in 1874, and reported a draft in 1887. At the end of three years of detailed criticism of this draft, the Government appointed a new commission to draw up a code *de novo,* using the first draft and the criticisms upon it as a guide. In 1898 the final draft was enacted, to take effect in 1900. The Japanese codes are founded on the German codes, and the Swiss code is an independent codification largely along German lines.

Codification in Anglo-Indian Law.—The first proposal to codify English law was made in the reign of Henry VIII. Afterwards, in 1614, Francis Bacon, then attorney general, proposed a "Digest or compiling of the common law" and a compiling of the statutes. This project was planned along the same lines as Justinian's codification, even to the recommending of "certain introductive and auxilliary books touching the study of the laws." Supervening political controversies prevented any action thereon.

The next essay at codification was brought about by the conditions of the administration of English law in India. The first of the Anglo-Indian codes was a penal code, drawn by a commission of which Lord Macaulay was a member and submitted in 1837, though it was not enacted until 1860. Since that time the greater part of the English law in force in India has been codified. The Anglo-Indian codes are twelve: (1) The Penal Code (1860); (2) the Succession Act (1865); (3) the Contract Act (1872), which includes quasi-contract, sales, suretyship, bailments, agency, and partnership; (4) the Negotiable Instruments Act (1881); (5) the Transfer of Property Act (1882); (6) the Trusts Act (1882); (7) the Easements Act (1882); (8) the Specific Relief Act (1877), dealing with equitable relief; (9) the Code of Criminal Procedure (1882);

(10) the Code of Civil Procedure (1882); (11) the Evidence Act (1872); (12) the Limitation Act (1877).

New York Codes.—The next attempt was made in New York. Agitation for a code in that state was in part due to the general dissatisfaction with the administration of justice in America in the first years of the nineteenth century, and in part to the connection of Edward Livingston with the adoption of the Louisiana code. David Dudley Field was the prime mover. Largely as a result of his agitation, the new constitution of 1846 provided for commissions to reform procedure and to codify the law. The commission to reform procedure was appointed in 1847, and reported in 1848 the first installment of a code of civil procedure, which was forthwith adopted; and in 1850 complete codes, both of civil and criminal procedure were submitted. Either substantially as reported by Field's commission, or in the form of codes based on his draft, the code of civil procedure is now in force in about thirty jurisdictions.

Enthusiasm for general law reform waned in New York and the act providing a commission to codify the substantive law was repealed. Field renewed the agitation and obtained legislative authority for a new commission in 1857. In 1865 five codes were submitted in the ninth and final report of this commission: (1) a code of civil procedure; (2) a code of criminal procedure; (3) a penal code; (4) a civil code; (5) a political code.

Field's final draft of a code of civil procedure was not adopted. Instead a code prepared on another plan, though founded on Field's code of 1848, was adopted between 1876 and 1880. This code went into great detail, having 3,356 sections (since increased to 3,441) against 392 in Field's original draft. Much of the deservedly severe criticism which has been urged against the New York Code of Civil Procedure applies rather to this attempt to make a rule for every detail of judicial action than to the original code of 1848. The penal code was enacted in 1887, but the other codes failed of enactment in New York.

Sixteen jurisdictions adopted the penal code and the code of criminal procedure. California, North and South Dakota, Montana and Idaho adopted all of Field's codes. In addition, North and South Dakota have probate codes. On the whole the civil code has achieved little in these jurisdictions; the courts have all but ignored it, seldom referring to it, treating it as merely declaratory, and deciding nearly all questions as pure questions of common law. This attitude of the courts was not the sole cause of the failure of Field's civil code. It was badly drawn; the work was too much for one man, and it was fortunate both for the administration of justice and for the cause of codification that New York did not accept his draft.

The Georgia Code.—The movement for codification in New York was paralleled in Massachusetts, where in 1835 an unusually strong commission was appointed to report upon the expediency of a code; but interest waned quickly and nothing further was done. Georgia, in 1858, provided for a code commission which prepared a code (reported and adopted in 1860) in four parts: (1) political and public organization; (2) the civil code; (3) the code of practice; (4) penal laws. For the most part this was only a revision and compilation of statute law, but the part known as the civil code (1,586 sections) is a digest of extracts from the ordinary text books of the common law in use in the United States at the time. It is not a code in the modern sense and the most that can be said for it is that it furnished an authoritative textbook of the common law at a time when, in that jurisdiction, many questions remained unsettled.

Codification in England.—In 1860, Lord Westbury, then Sir Richard Bethell, announced a plan for a revision of English statute law. In 1863, as Lord Chancellor, he proposed an official digest of the reported cases in preparation for a code. In 1866 a commission was appointed to enquire into the expediency of such a digest. The first report of this commission favored codification, but nothing came of the project because of the retirement of Lord Westbury and the movement for reform of procedure which resulted in the Judicature Act. A code commission was appointed in the colony of Victoria in 1879. A draft was submitted in 1882, but the matter went no further. After the Judicature Act, the necessity of putting English commercial law in better form led to the Bills of Exchange Act (1882), Partnership Act (1890), and Sale of Goods Act (1894), which codify important parts of the law. This has been called gradual codification.

Uniform State Laws.—Following this example, at the instance of the American Bar Association, an annual conference of commissioners on uniform state laws, meeting in connection with that association, has gradually codified the law on several topics. The more important of these acts are: (1) Negotiable Instruments Act (in force in 40 jurisdictions); (2) Warehouse Receipts Act (22 jurisdictions; (3) Sales Act (10 jurisdictions); (4) Stock Transfer Act (5 jurisdictions); (5) Bills of Lading Act (7 jurisdictions).

Conditions Producing Codification. — Two classes of countries have adopted codes: countries with well-developed systems which had exhausted the possibilities of juristic development on the basis of the traditional element of their law and required a new basis for a new juristic development; and countries which had their whole legal development before them and required an immediate basis therefor. In the former, six conditions may be noted: (1)

the possibilities of juristic development of the traditional law were exhausted; (2) the law was intolerably unwieldy in form; (3) it was full of obsolete rules, resting only on history and out of accord with the more modern portions of the system; (4) many fundamental questions, which had long been debated were unsettled; (5) the growing point of the law had shifted definitely to legislation; (6) in most cases there was also imperative need of unifying the law.

Defects of Codes in the Past.—Defects in codes which are not at all inherent in codification have been the basis of most arguments in opposition thereto. These defects are of two classes. (1) Too often the codifiers had but superficial knowledge of the law they tried to codify. The law of a modern state is too complex to be so mastered in all its parts by one man or by a few men as to enable him or them to draw up a code. (2) In most cases in the past codes have been drawn too hurriedly. The German civil code shows what may be done by a sufficiently large commission, taking ample time for its work.

The Case For and Against Codification.—If we may judge from the conditions which have produced codes elsewhere, it must be evident that the Anglo-American legal system, especially in the United States, is rapidly approaching a condition which will call for codification. (1) Our case law is by no means rising to new situations as it was able to do in the past: it has broken down in such varying cases as employers' liability, workmen's compensation, holding promoters to their duties, and enforcing the legal duties of public utilities. The traditional element of our law shows signs of having exhausted its possibilities for the time being. (2) Obvious defects in the form of our law are: want of certainty; waste of labor entailed by the unwieldy bulk of jural material; lack of knowledge of the law on the part of those who amend it; irrationality, due to partial survival of obsolete rules; and confusion. (3) The growing point of our legal system is shifting to legislation and an efficient organ of legislation is developing. (4) The need for unification of law grows in importance every day.

Apart from those objections based on the defects of hastily drawn codes in the past, the arguments against codification resolve themselves into three: (1) That the growth of law is likely to be impeded or diverted into unnatural directions; but experience shows this is not necessarily true; on the whole, the French code brought about a juristic new start which has favored development; even more is this proving true of the new German code. (2) That a code made by one generation is likely to project the intellectual and moral notions of the time into periods when such notions have become anachronisms. There is truth in this certainly, but the development of law through juristic or judicial working over of the traditional element is open to the same objection. Our common law is full of examples of projection into the present of the ideas and modes of thought of the past. (3) That codes are productive of needless litigation; this objection proceeds upon experience of codes of procedure in America, and assumes a judicial attitude toward legislation which is becoming obsolete.

Codification is not a panacea. Neither is it the impossibility nor would it be the misfortune which conventional Anglo-American professional opinion has branded it. At present, the chief objection is that we are not quite ready for it. A system of the common law as a whole should first be achieved.

See JUDICIARY AND JUDICIAL REFORM; JUDICIARY, STATE; JURISPRUDENCE; LAW, CIVIL. LAW, STATUTE.

References: J. Austin, *Jurisprudence* (3d ed., 1869), Lect. 39 and notes on Codification, 1056–1074; J. C. Carter, *Law, Its Origin, Growth and Function* (1907), Lects. 11, 12; R. F. Clarke, *Science of Law and Law Making* (1898), an argument against codification; J. F. Dillon, *Laws and Jurisprudence of England and America* (1894), 178–187; F. M. Goadby, *Introduction to the Study of Law* (1910), ch. iv; C. Warren, *Hist. of the Am. Bar* (1911), ch. xix; F. C. von Savigny, *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* (1814), translation by Hayward (1831); H. A. A. Danz, *Die Wirkung der Codificationsformen auf das materielle Recht* (1861); M. A. von Bethmann-Hollweg, *Ueber Gesetzgebung und Rechtswissenschaft als Aufgabe unserer Zeit* (1876); R. Demogue, *Les notions fondamentales du droit privé* (1911), 207, and recent French literature cited in note 2; *Livre du centennaire du code civil français* (1904) E. J. Schuster, "The German Civil Code" in *Law Quart. Rev.*, XII, 17.

ROSCOE POUND.

COEDUCATION AND COÖRDINATE EDUCATION

Definition.—The term coeducation denotes the education of the two sexes together, with no distinction as to conditions of admission, opportunities to select courses, requirements for graduation, or granting of honors. Coördinate education involves the education of the sexes in separate classes in affiliated institutions, or in separate colleges of the same institution, with like requirements as to conditions of admission, grade of work and the conferring of degrees. Coeducation means that the two sexes recite and compete for honors in

the same classes; coördinate education means that the sexes recite in separate classes either to the same or different instructors. "Segregation" of the sexes in separate classes, to whatever degree, is a movement away from coeducation and toward coördinate education; and entire segregation is known as coördinate education.

Schools.—Coeducation is the prevailing system of education in the United States from the elementary schools through the colleges and universities. The elementary public schools of the United States are all coeducational with the exception of a few on the Atlantic seaboard. The colonial free public schools were established for boys only; and the subsequent demand for similar provision for girls required new buildings and accommodations. In the public high schools coeducation is, likewise, almost universal, though separate high schools have long been maintained in Boston, New York City, Philadelphia, Baltimore, Charleston and New Orleans. An experiment, the first in the West, in segregating the boys and girls during the first two years of the high school course was started in 1906 in the Englewood High School of Chicago. The United States Commissioner of Education stated in his Report for 1910 that this experiment "has not only attracted wide attention, but has been followed in several other high schools, hence it may be said to represent a tendency of more than passing importance."

President G. Stanley Hall is opposed to coeducation during the period of adolescence, because of the different educational treatment that, he claims, is required by boys and girls at that period. Other authorities claim that better results are obtained by segregating pupils of different abilities in separate classes rather than by segregating the two sexes. The widespread introduction of vocational education has had a tendency to bring about automatically a certain degree of segregation of the sexes in the primary and secondary public schools. However, there has been no general movement toward segregation *per se* in these schools. Even in the private secondary schools nearly half of the pupils enrolled are in coeducational schools. The system is aided by several factors: (1) coeducation has been considered a democratic institution; (2) in most sections of the country there are not a sufficient number of students to make more than one grammer school and one high school an economical arrangement; (3) unlike European countries, the great majority of teachers in the educational system of the United States are women.

Colleges and Universities.—Coeducation in public colleges and universities naturally followed coeducation in the primary and secondary schools. In the West it is almost the only system of education. In the South it tends to become the prevailing system through the influence of coeducational state universities. In the north central states only one tenth of the higher educational institutions are closed to women. On the other hand, in the New England and northern middle states the great majority of college students are receiving their education separately in endowed institutions.

The coeducation of women and men in colleges began when the Oberlin Collegiate Institute (now Oberlin College) was opened in 1833. During the next forty years the state universities as they were founded admitted women or were later opened to women in response to public opinion. Since 1873 all state universities have been open to women except those of Georgia, Virginia and Louisiana. One of the state universities in the East, the University of Maine, admitted women in 1872. Cornell admitted women in the same year. Of the 602 universities, colleges, and technological schools enumerated in the Report of the Commissioner of Education for 1910, 142 are for men only, 108 are for women, and 352 are for both sexes. The number of undergraduate and graduate students in the 89 public institutions of higher education were 49,919 men and 17,707 women; the number of such students in the 513 private institutions of like grade were 70,663 men and 46,423 women.

Coördinate Institutions.—In the eastern states the tendency is toward coördinate education and education in separate colleges. Coordinate education is best illustrated by Radcliffe, the Women's College of Brown University, and Barnard, affiliated respectively with Harvard, Brown, and Columbia universities, and by the College for Women, of Western Reserve University, and the H. Sophie Newcomb Memorial College for Women, of Tulane University. The women of Brown, Barnard and Radcliffe receive instruction from the same professors, as do the men students of the affiliated colleges; the women of Brown and Barnard receive Brown University and Columbia University degrees while the women of Radcliffe receive Radcliffe and not Harvard degrees. The Newcomb College for Women and the College for Women in Western Reserve University receive entirely different instruction under different instructors from those of the men in the affiliated colleges. The trustees of Wesleyan (Connecticut) voted on February 26, 1909, to exclude women altogether after 1913, apparently because of the hostility shown toward women by the men of undergraduate departments. In 1910 the trustees of Tufts College received legislative authority to establish and maintain for the education of women exclusively a college to be known as the Jackson College for Women. An investigating committee reported that there is a fundamental difficulty "in the way of success of coeducation in Tufts College, and that this difficulty lies in and pervades the

whole student body, growing stronger rather than diminishing." Coeducation has been wholly or partly abandoned by Colby College of Maine, coeducational from 1871, which has taught women in separate classes in required work since 1890; the University of Chicago, coeducational since it opened in 1892, introduced separate instruction called segregation, for men and women in the junior college, in the year 1903–1904, but it is not systematically carried out.

Discussion of Coeducation.—The opinions of authorities in regard to the advisability of coeducation in colleges and universities differ widely. However, "on the whole, the question of coeducation appears more and more as one of adjustment to prevailing conditions, hence experiments at temporary segregation, or complete separation of students on the basis of sex, are not likely to effect any radical change in the prevailing policy of the different sections of the country in this respect." President M. Carey Thomas of Bryn Mawr College maintains that "all the arguments against the coeducation of the sexes in colleges have been met and answered by experience." Ex-President Eliot of Harvard has stated that we have learned by actual trial that young women can learn all the more difficult subjects of education just as well as young men." It is now generally held that young women can do regular college work without impairing their physical vigor.

The attitude of western educators is almost uniformly in favor of coeducation, as expressed by the following resolution of the Board of Regents of the University of Wisconsin in 1908:

> Men and women shall be equally entitled to membership in all classes of the university, and there shall be no discrimination on account of sex in granting scholarships or fellowships in any of the colleges or departments of the university.

The presidents of several leading state universities have expressed themselves strongly in favor of coeducation.

Coeducation is the rule throughout the United States in graduate work and professional schools. Apart from the Roman Catholic universities, only three of the important universities—Clark, Princeton and Johns Hopkins exclude women from the graduate department and even Johns Hopkins admits them to the medical school.

In general, both men and women in the East and especially in the New England states, prefer separate or coördinate college education; in the West both prefer coeducation in collegiate work. Thirty years of experience appears to indicate that women prefer a college curriculum coördinate in every way with that of men's colleges instead of a modified one.

See Education, Recent Tendencies in; Education of Women; Educational Statistics; Schools, High; Schools, Public, Normal; Schools, Public, System and Problems; State Universities; Universities and Colleges, Endowed and Private.

References: Mary Crawford, *College Girl of America* (1905), (women's colleges characterized); H. M. Olin, *Women of a State University* (1909), (experience of the University of Wisconsin); A. T. Smith, "Coeducation in the Schools and Colleges of the United States" in U. S. Commissioner of Education, *Annual Report*, 1903, I, 1047, selected biography; "Coeducation of the Sexes in the U. S." in *ibid*, 1901, II, 1217; Marion Talbot, *Education of Women* (1910); M. C. Thomas, "Education of Woman" in *Monographs on Education in the U. S.* (issued by the Louisiana Purchase Exposition, 1904). C. F. Thwing, *College Woman* (1894); *Am. Year Book, 1910*, 795, *ibid, 1911*, 817; and year by year. W. F. Slocum.

COERCION OF INDIVIDUALS. The ultimate support of every government is physical power to defend the officers of the government in the exercise of their legal functions. Normal protection is given: (1) by laws defining offenses which strike at the root of government; (2) by the authority of judicial courts to cause the arrest of offenders; (3) by their trial and punishment. Should this orderly process be interrupted by force, both federal and state courts may provide temporary officers of the law, and may call out the *posse comitatus* (*see*) that is, all the able-bodied men within their jurisdiction, to assist in the service of process. Should these means be unavailing, the next step is to call on the state executive for aid; and his ordinary force is the militia.

At this point the attitude of the state toward the individual changes. The proper purpose of the militia is not to arrest this or that man, but to break up resistance; and they may, therefore, be ordered to fire on rioters or mobs, who have not committed any other offense than maintaining an appearance of disorder. This is a military, and not a judicial act, though militiamen sometimes are under such circumstances tried for murder, the proof of the word of command is, or should be, a complete defense.

Individuals injured or killed in resistance to such forces act outside the protection of the law, and as long as they keep up a resistance may be dispersed. If the militia are insufficient or sympathetic with the crowd, the states, under the Federal Constitution (Art. IV, Sec. iv) may ask aid from the President of the United States; and he may call out militia from other states, or regular troops or sailors. Without any state call on the President, if in his judgment the disturbances interfere with the execution of federal law, or of interstate commerce, he may send militia or regulars on his own initiative. In serious disturbances states or Congress may suspend

the habeas corpus, or martial law may be declared; in either case persons may be arrested on suspicion and held for the time without charge or trial.

See COERCION OF STATES; EXECUTION OF PROCESS; INDIVIDUALISM, THEORY OF; INJUNCTION IN LABOR DISPUTES; INSURRECTIONS, SUPPRESSION OF; LIBERTY, CIVIL; LYNCHING; ORDER, MAINTENANCE OF; REBELLION; RIOTS, SUPPRESSION OF.

References: A. B. Hart, *Actual Government*, (rev. ed., 1908), §§ 250–253, *Nat. Ideals Historically Traced* (1907), ch. xiii; "Federal Aid in Domestic Disturbances" in *Sen. Docs.*, 51 Cong., 2 Sess., No. 209 (1891); bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), §§ 184, 206, 241, 270.

ALBERT BUSHNELL HART.

COERCION OF STATES. Coercion is a term applied to the means, principally non-judicial, for securing obedience to law. During the Civil War an effort was made to nullify the action of the Federal Government upon individuals by setting up the authority of states in opposition to that of the Federal Government. The seceding states held that there were no means of meeting the case under the Constitution because a state could not be coerced (*see* SECESSION CONTROVERSY). The Federal Government met the issue by insisting that no state could exist or act except under its obligations to the Federal Union; and that no state could dissolve the power to coerce individuals. Previous to firing on Fort Sumter, President Lincoln announced that he would not send armies to restore the allegiance of states in rebellion, but asserted the right to support, or to retake the forts of the United States.

When the war began the Federal Government insisted that it was dealing only with individuals (*see* RECONSTRUCTION); but it was evidently confronted by organized and hostile communities; therefore it always asserted the principle that those communities were not states at all but treasonable combinations of individuals. Lincoln, by his Amnesty Proclamation of December 8, 1863, offered to recognize these communities if they would again establish state governments conformable to the Constitution; which was eventually the accepted form of procedure (*see* RECONSTRUCTION).

See COERCION OF INDIVIDUALS; COURTS AND UNCONSTITUTIONAL LEGISLATION; INSURRECTIONS, SUPPRESSION OF; INTERPOSITION; NULLIFICATION; ORDER, MAINTENANCE OF; REBELLION; SECESSION; STATE SOVEREIGNTY; STATES IN THE UNION; WAR POWER, CONSTITUTIONAL.

References: P. C. Centz (J. B. Sage), *Republic of Republics* (4th ed., 1881); W. Whiting, *War Powers under the Const.* (1864), *War Power of the President* (8th ed., 1864); A. Lincoln, "Messages of July 4, Dec. 3, 1861" in *Am. Hist. Leaflets*, No. 18 (1894), No. 26 (1896), Secession Ordinances in *ibid*, No. 12 (1893), *South in the Building of the Nation* (1909–1910); bibliography in A. B. Hart, *Manual* (1910), §§ 48, (lect. 55), 52 (lect. 80).

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COFFIN HAND-BILLS. Handbills issued during the campaign of 1828 by Binns, editor of the *Democratic Press* of Philadelphia, an Adams supporter, narrating the lawless deeds of Jackson, especially his execution of a number of militiamen as deserters in the Florida campaign. These hand-bills were bordered with woodcuts of coffins, hence the name "coffin hand-bills." See JACKSON, ANDREW.

O. C. H.

COHENS vs. VIRGINIA. In the case of Martin *vs.* Hunter's Lessee (1 *Wheaton* 304) decided in 1816, the federal Supreme Court held, Justice Story rendering the chief opinion, that to that court might constitutionally be given jurisdiction to review decisions of the courts of the states in which federal rights, privileges and immunities are set up and adversely passed upon. In Cohens *vs.* Virginia (6 *Wheaton* 264) decided in 1821, the same point was again raised and the federal authority again upheld. Here the principal opinion of the Supreme Court was read by Chief Justice Marshall, who seized the opportunity to state elaborately his conception of the nature of the American constitutional system, and to emphasize the supremacy of federal authority when questioned upon the ground of the reserved sovereign powers of the states. The theory of the state of Virginia which denied to the federal tribunal the final authority to determine the validity of an alleged federal right, privilege, or immunity, was declared to be tantamount to the assertion that "the nation does not possess a department capable of restraining peaceably, or by authority of law, any attempts which may be made by a part against the legitimate powers of the whole; and that the government is reduced to the alternative of submitting to such attempts, or of resisting them by force." The importance of the final decision of this point it is impossible to overestimate. Its decisive character was at once seen and opposed, though ineffectually, by the states' rights school. Calhoun declared that "it is of itself, all sufficient to convert it [the United States] into a national, consolidated government." ("Discourse On Government," *Works*, I, 338.)

It was also argued in this case that the suit was, in effect, one against a state, and as such forbidden by the Eleventh Amendment. Here, too, the contention was overruled, the amendment being declared to have no application to a case in which the defendant "removes a judgment rendered against him by a State court for the purpose of re-examining the question whether that judgment be in violation

of the Constitution or laws of the United States." Still other points were involved, the only one of which needs mention here is that which related to the legislative powers of Congress over the District of Columbia, this question arising out of the fact that the federal law, the violation of which by the state was alleged, was one of Congress providing for the establishment of a lottery in the District. When enacting laws for the District (*see* DISTRICT OF COLUMBIA), it was declared, Congress acts not only as a local legislature but as a national legislature, and therefore, its acts are national in the sense that, as far as is necessary for their enforcement, they have a validity throughout the Union.

See COURTS, FEDERAL; ELEVENTH AMENDMENT; STATES AS PARTIES TO SUITS; UNITED STATES AS A FEDERAL STATE.

References: J. P. Cotton, Ed., *Constitutional Decisions of John Marshall* (1905), I, 400–460, "Constitutional Development in U. S. as Influenced by Chief Justice Marshall" in *Constitutional Hist. as Seen in Am. Law* (1890), 85–90; A. B. Magruder, *John Marshall* (1899), 196–198; W. E. Dodd, "Chief Justice Marshall and Virginia" in *Am. Hist. Review*, XII (1907), 776–787. W. W. WILLOUGHBY.

COINAGE AND SPECIE CURRENCY IN THE UNITED STATES

Early Conditions.—Prior to 1789 there were but two important incidents relating to domestic coinage: (1) the coinage of pine tree shillings and smaller silver pieces by a mint in Massachusetts in the latter half of the seventeenth century; (2) the discussion during the period of the Confederation of a plan for a monetary unit and coinage based thereon. Under the Articles of Confederation the states as well as Congress were given the right to coin, but Congress had the right to regulate the alloy and value of coins. Massachusetts was the only state to take advantage of this privilege, and minted a few copper coins. In 1782 and 1783 Robert Morris and Thomas Jefferson submitted reports in regard to the selection of a money unit; in 1786 the Board of Treasury made three elaborate reports upon this subject; and in the same year Congress authorized the establishment of a mint. Nothing, however, came of these efforts and the country was still dependent upon the use of foreign coins, particularly Spanish silver dollars.

Federal Coinage.—Under the Constitution, the right of coinage was reserved to the Federal Government (Art. I, Sec. viii, ¶ 5). In 1791 Hamilton, Secretary of the Treasury, reported a plan for the establishment of a mint, and in accordance with his recommendations the mint act was passed April 2, 1792. The decimal system was adopted, the money of account being expressed in dollars, dimes, cents and mills. Provision was made for the coinage of gold, silver and copper coins; of gold eagles, half eagles and quarter eagles ($10, $5, and $2.50 respectively); of silver dollars or units of the value of the Spanish dollar, to contain 371–4/16 grains of pure silver or 416 grains of standard silver; and of copper cents. The term unit referred to under the silver coins had reference to a unit of numbers and not to a unit of value. A bimetallic system was thus adopted, with a ratio of gold and silver of 15 to 1. The standard of the fineness of gold coins was 11/12, and of silver, 892.43 to 1000. Opportunity for coinage was free to all and without charge, or, as technically termed, both free and gratuitous. Provision was also made for silver half dollars, quarter dollars, dimes and half dimes, and for copper cents and half cents. The mint was established at Philadelphia.

Changes 1834 to 1837.—No change was made in the coinage laws until 1834 (June 28). The weight and fineness of the gold coins was then reduced; the weight of the eagle, for example, from 270 to 258 grains, and the fineness from 916.66 to 899.225 to 1,000. The ratio of silver to gold under this act became approximately 16 to 1. January 18, 1837, a minor change was made by making the fineness 900 to 1,000, at which standard it has remained until the present time (1913). These changes, in 1834 and 1837, were demanded because, under the older mint ratio of 15 to 1, gold was undervalued at the mint; so that no gold was brought to the mint for coinage, and the coins minted during the first part of the century disappeared from circulation.

Changes, 1837 to 1865.—February 21, 1853, the policy of gratuitous coinage was reversed by the imposition of a charge of one-half per cent for coinage either of gold or silver. Of still more importance was the restoration of the coinage of subsidiary silver coins (that is the halves, quarters, dimes, half dimes and three cent pieces) to the account of the Treasury, and reducing the weight of those coins so as to provide a seigniorage. The reason for this change, however, was not the desire to make a profit, but to retain small silver coins in circulation. Experience had again shown that it was difficult to adjust the mint ratio to the market ratio of gold and silver. Silver was now undervalued according to the world's market of bullion values, and silver coins had disappeared. Reducing the weight of smaller coins by seven per cent nullified the pre-

vious advantage of withdrawing them from circulation. The legal tender quality of these coins was, at the same time limited to $5. New coins were also authorized; in 1849 the double eagle and gold dollar; in 1851 the silver three-cent piece; and in 1853 the gold three-dollar piece. In 1857 the coinage of the old heavy copper cents and half cents was discontinued, and there was substituted a coin of 72 grains, 88 parts copper and 12 parts nickel. A further reduction in size was made in 1861, the weight being changed to 48 grains, and an alloy of bronze substituted for that of the nickel. At the same time provision was made for a two-cent bronze piece, and in 1863 for a three-cent coin, of different alloy, however, weighing only 30 grains. In 1865 the five cent nickel piece was added to the coins, and in that year the minor coins (that is those other than gold or silver) were given a legal tender quality.

Revision of 1873.—In 1873 the coinage laws were thoroughly revised. The most important change was the discontinuance of the coinage of the silver dollar. The three and five cent silver pieces, and the two cent bronze piece were also dropped. Over the omission of the silver dollar from the list of authorized coins there was subsequently a long and bitter controversy (*see* SILVER COINAGE CONTROVERSY). The obvious reason for this action was the disappearance of the silver dollar from circulation, again due to the fact that silver was undervalued at the mint. As it was not of current importance and not needed for a monetary medium, owing to the great importance of paper money, no significance had been attached to its continuance as a standard coin. In order, however, to serve the assumed needs of Oriental trade, authority was given for the coinage of a trade dollar of 420 grains, which was equal in weight to the Mexican dollar, favorably known and received in China. This coin had but a brief history, for in 1887 Congress ordered that it be withdrawn, and that the bullion be converted into standard silver dollars. The act of 1873 also made the one dollar gold piece of 25.8 grains 9/10 fine the unit of value. In 1875 a twenty cent piece of silver was authorized, but its similarity to the quarter dollar proved confusing, and its coinage was soon discontinued.

Recent Legislation.—In 1875, Congress restored the silver dollar to the list of legal tender coins, and in 1878, by the Bland-Allison Act (*see*) provided for the coinage of a limited volume of silver coins of full legal tender quality. Under this law not less than $2,000,000 nor more than $4,000,000 of silver was to be purchased monthly (at current bullion values) and coined into dollars similar in weight and fineness to those authorized by the law of 1837. Under the Sherman Act of 1890, while the purchase of silver was increased, coinage of the silver dollars was made dependent upon the amount needed to redeem the Treasury notes issued under the act. In the same year the coinage of the one and three dollar gold pieces was discontinued. In 1893 the Sherman Act was repealed and silver purchases ceased. Coinage into dollars of the silver on hand, however, continued until 1905, when all the stored bullion had passed through the mint.

The total coinage, 1793–1911, was:

Gold	$3,271,514.410
Silver	971,904,364
Minor	60,869,308
Total	$4,304,288,083

By denominations gold coins have been minted as follows (millions):

Coin	Period	Amount
Double eagles	1850–1911	$2,350.0
Eagles	1793–1804 1838–1911	492.1
Half eagles	1793–1911	370.0
Three dollars	1854–1889	1.6
Quarter eagles	1796–1808 1821–1911	38.1
Dollars	1849–1889	19.8

Silver dollars (standard) have been minted, 1793–1909, $578,000,000; and trade dollars, $40,000,000.

Coins in denominations of less than one dollar are technically known as subsidiary and minor. The subsidiary coinage is of silver and has been as follows, to 1911 (millions):

Half dollars	$188.1
Quarter	98.3
Twenty cents (1875–8)	.3
Dimes	64.7
Half dimes (to 1875)	4.9
Three cents (to 1875)	1.3

By act of July 14, 1875, the amount of subsidiary coinage was limited to what was necessary to retire fractional paper currency, but in 1900 all limits were removed. Two-fifths of the minor coinage was minted during the year 1896–1906, owing to the demands of retail buisness. By denominations, the minting of minor coins has been as follows, to 1911 (millions):

Coin	Period	Amount
Five cents	1866–1911	$34.8
Three cents	1865–1889	.9
Two cents	1864–1873	.9
Cents	1793–1911	24.2

Abrasion.—The coinage laws make careful provisions relating to abrasion of gold coins. Any gold coin, if reduced in weight by natural abrasion more than one-half of one per cent below the weight permitted by law, ceases to be a legal tender for its face value; a double eagle, therefore, with standard weight of 516 grains has a margin of safety within 2.58 grains.

See ASSAY OFFICES; COINAGE, ECONOMIC PRINCIPLES OF; COINAGE, FREE; COINS, VALUE OF FOREIGN; CURRENCY; GOLD CERTIFICATES; MINT OF THE UNITED STATES; POOR MAN'S

Dollar; Seigniorage; Silver Coinage Controversy; Silver Certificates; Sixteen to One; Token Coinage; Trade Dollar.

References: D. K. Watson, *Hist. of Am. Coinage* (1899); H. R. Linderman, *Money and Legal Tender in the U. S.* (1879); H. White, *Money and Banking* (4th ed., 1911), 30–40; Director of the Mint, *Annual Reports;* W. A. Scott, *Money and Banking* (1903), 69–98; M. L. Muhleman, *Monetary and Banking Systems* (1908), 12–18. Davis R. Dewey.

COINAGE, ECONOMIC PRINCIPLES OF. Coinage is the operation of manufacturing metals into forms designed to be used as money, the process involving certification of weight and fineness. In the execution of this there are fundamental questions of principle to be settled, the most important of which are: (1) the agency to which coinage shall be entrusted; (2) the metal to be selected for coinage; (3) the terms under which coinage shall be executed.

Agency.—It is agreed that the business of coinage should be a government monopoly. Historically, this has been for gold and silver, the practice for many centuries, originally due to the desire of the sovereign to retain the profits derived from coinage often accompanied by debasement. Public convenience later demanded that the guarantee of weight and fineness should be in the hands of a single agency. The coinage of gold and silver, therefore, in England has always been regarded as a royal prerogative. Supervision of minor coinage, however, has been less strict. During the seventeenth century there were circulated in England over 10,000 different copper token coins, manufactured by private individuals, and such issues were not prohibited until 1816. Occasionally a representative of an extreme individualistic philosophy, as Herbert Spencer, has advocated that coinage, as other manufactures, should be left open to private initiative and undertaking, but the disadvantages are too obvious. Unless coinage is uniform and there is confidence in the integrity of the coinage, exchange would be impeded, to say nothing of the loss to the ignorant who could not protect themselves against fraud.

Metals to be Selected for Coinage.—Over the question of selecting more than one metal for coinage with unlimited legal tender has arisen the controversy of bimetallism (*see*). In brief, it is here to be noted that the monometallist claims that gold and silver coins will not continue to circulate concurrently, for, as each metal is subject to its fluctuation in value, owing to changing conditions in supply and demand of each as bullion, the cheaper metal will be chosen as a medium of payment, thus driving out of circulation the dearer metal. The bimetallist on the other hand argues that as the monetary demand and use constitutes by far the largest part of the total demand of the metal under consideration, free access to coinage of a metal (which otherwise would depreciate in value in terms of another monetary metal) will tend to raise its value; while the withdrawal of the dearer metal from the mint to exclusive commercial use will tend to lower its value, thus tending to draw the valuations of the two metals closer and closer together. It is, however, generally agreed that while this position may be logically sound, it involves the adoption of a similar coinage policy by all important commercial nations using the two metals; otherwise the influences affecting the values of the two metals in both the commercial and mint markets will not be identical, and unless they are approximately universal in their action, the two metals will diverge from the established legal ratio. As it is impracticable to secure international agreement, the argument in favor of bimetallic coinage becomes largely academic, thus leaving to each nation the responsibility of making its own selection. The metal thus selected becomes the standard of the monetary system.

Conditions of coinage.—In former times the sovereign or government which controlled the monopoly of coinage imposed a charge known as seigniorage. It is now the practice in England, the United States, and some other countries to mint the metal chosen as the standard of value into coins without charge to the bearer, the entire cost being born by the government. Logically, it has been urged, the bearer of the bullion should pay the cost of manufacture, for he receives back the metal in a form serviceable for a special use—*viz.*, an exchange medium. Moreover, if mint value of a coin is greater than its bullion value, there will be no inducement to export the coin or to melt it for use in the industrial arts. On the other hand it is urged that a free movement of standard money, whether from coins to the arts, or from one country to another, is highly advantageous in order to keep the value of the standard as stable as possible. The cost of coinage is not great, and even if the expense of the mint is increased by the requirement of continuous recoinage, the elimination of friction in distribution more than compensates for such expense. This argument applies only to standard money which is now gold in most countries.

See Coinage and Specie Currency in the United States; Money; Silver Coinage Controversy.

References: F. A. Walker, *Money* (1873), 164–274; W. S. Jevons, *Money and the Mechanism of Exchange* (1883), 55–66, 136–166; H. White, *Money and Banking* (4th ed., 1911), 16–29; W. A. Scott, *Money and Banking* (1903), 69–83, 293–352. Davis R. Dewey.

COINAGE, FREE. This term is applied to a privilege open to anyone, to bring bullion to

VALUES OF FOREIGN COINS

COUNTRY	Legal Standard	Monetary unit	Value in U. S. money	Remarks
Argentine Republic	Gold	Peso	$0.9647	Currency: Depreciated paper, convertible at 44 per cent of face value.
Austria-Hungary	Gold	Crown	.203	
Belgium	Gold and silver	Franc	.193	Member, Latin Union; gold is actual standard.
Bolivia	Gold	Boliviano	.389	12½ bolivianos equal 1 pound sterling.
Brazil	Gold	Milreis	.546	Currency: Government paper, convertible at $0.3244 to the milreis.
British Colonies in Australasia and Africa	Gold	Pound sterl'g	4.8665	
Canada	Gold	Dollar	1.000	
Central Am. States: Costa Rica	Gold	Colon	.465	
British Honduras	Gold	Dollar	1.000	
Guatemala, Honduras, Nicaragua, Salvador	Silver	Peso	.436	Guatemala: Currency, inconvertible paper, exchange rate 16 to 18 pesos=$1.00. Honduras: Currency, bank notes, exchange rate March 20, 1912, $0.415. Nicaragua: Currency, inconvertible paper, exchange rate 16¾ to 17 pesos=$1.00. Salvador: Currency convertible into silver on demand.
Chile	Gold	Peso	.365	Currency: Inconvertible paper; exchange rate, approximately, $0.2230.
China	Silver	Tael: Amoy	.715	
		Tael: Canton	.713	
		Tael: Cheefoo	.683	
		Tael: Chin Kiang	.698	
		Tael: Fuchau	.661	
		Tael: Haikwan (Customs)	.727	
		Tael: Hankow	.669	
		Tael: Kiaochow	.712	
		Tael: Nankin	.707	
		Tael: Niuchwang	.670	
		Tael: Ningpo	.697	
		Tael: Peking	.697	
		Tael: Shanghai	.653	
		Tael: Swatow	.660	
		Tael: Takau	.729	
		Tael: Tientsin	.528	
		Dollar. Yuan	.528	
		Dollar: Hongkong	.470	
		Dollar: British	.470	
		Dollar: Mexican	.480	
Colombia	Gold	Dollar	1.000	Currency: Inconvertible paper; exchange rate, approximately, $102 paper to $1 gold.
Denmark	Gold	Crown	.268	
Ecuador	Gold	Sucre	.487	
Egypt	Gold	Pound (100 piasters)	4.943	The actual standard is the British pound sterling, which is legal tender for 97½ piasters.
Finland	Gold	Mark	.193	
France	Gold and silver	Franc	.193	Member, Latin Union; gold is actual standard.
German Empire	Gold	Mark	.238	
Great Britain	Gold	Pound sterl'g	4.8665	
Greece	Gold and silver	Drachma	.193	Member, Latin Union; gold is actual standard.
Haiti	Gold	Gourde	.965	Currency: Inconvertible paper; exchange rate, approximately $0.2941.
India (British)	Gold	Rupee	.3244⅓	(15 rupees equal 1 pound sterling.)
Italy	Gold and silver	Lira	.193	Member, Latin Union; gold is actual standard.
Japan	Gold	Yen	.498	
Liberia	Gold	Dollar	1.000	Currency: Depreciated silver token coins. Customs duties are collected in gold.
Mexico	Gold	Peso	.498	
Netherlands	Gold	Florin	.402	
Newfoundland	Gold	Dollar	1.014	
Norway	Gold	Crown	.268	
Panama	Gold	Balboa	1.000	
Paraquay	Silver	Peso	.436	Currency: Depreciated paper, exch. rate 1,550 %.
Persia	Gold and silver	Kran	.1704	This is the value of the gold kran. Currency is silver circulating above its metallic value; exchange value of silver kran, approximately, $0.0885.
Peru	Gold	Libra	4.8665	
Philippine Islands	Gold	Peso	.500	
Portugal	Gold	Milreis	1.080	Currency: Inconvertible paper; exchange rate, approximately, $0.9860.
Roumania	Gold	Leu	.193	
Russia	Gold	Ruble	.515	
Santo Domingo	Gold	Dollar	1.000	
Servia	Gold	Dinar	.193	
Siam	Gold	Tical	.3708	
Spain	Gold and silver	Peseta	.193	Valuation is for the gold peseta; currency is silver circulating above its metallic value; exchange value, approximately, $0.1794.
Straits Settlements	Gold	Dollar	.5677	
Sweden	Gold	Crown	.268	
Switzerland	Gold	Franc	.193	Member, Latin Union; gold is actual standard.
Turkey	Gold	Piaster	.044	100 piasters equal to the Turkish £.
Uruguay	Gold	Peso	1.034	
Venezuela	Gold	Bolivar	.193	

the mint for coinage. It is to be distinguished from gratuitous coinage, which implies that coinage is undertaken by the mint without cost to the customer. Until 1873 there was free coinage of both gold and silver; of the former into any of the denominational coins authorized by law; and of silver into dollars and subsidiary coins until 1853, and between 1853 and 1873 into dollars only. Since 1873 there has been free coinage only of gold. The term "free coinage" came into popular use during the long struggle, 1875–1896, to restore silver to full privileges at the mint, and, as so used, always relates to silver. See COINAGE AND SPECIE CURRENCY IN THE UNITED STATES; COINAGE, GOLD; CRIME OF '73; DOLLAR OF OUR DADDIES; SEIGNIORAGE; SILVER COINAGE CONTROVERSY; SIXTEEN TO ONE. Reference: A. B. Hepburn, *Hist. of Coinage and Currency in the United States* (1903), consult index.

D. R. D.

COINAGE, SUBSIDIARY. According to use at the mint this term is applied only to the coinage of silver coins of denominations less than one dollar. In more general practice it often refers to all coins which make up the small change of a country. See COINAGE AND SPECIE CURRENCY IN THE UNITED STATES; CURRENCY, FRACTIONAL; DOLLAR OF OUR DADDIES. D. R. D.

COINING MONEY. The sovereign prerogative of making and issuing stamped pieces of metal of prescribed shape, weight, and degree of fineness to circulate as money at a fixed value is conferred upon Congress and denied to the states. (Const. of the U. S., Art. I, Sec. viii, ¶ 5, and Sec. x, ¶ 1). See COINAGE, GOLD; COUNTERFEITING; LEGAL TENDER CASES; MONEY; SEIGNORAGE; SILVER COINAGE CONTROVERSY. E. McC.

COINS, FOREIGN, VALUE OF. The values of foreign coins in terms of United States money, as estimated by the Director of the Mint, July 1, 1913, are given on the preceding page. See COINAGE AND SPECIE CURRENCY IN THE UNITED STATES; LEGAL TENDER. References: U. S. Treasury Department, *Values of Foreign Coins*, Dept. Circular issued quarterly.

E. H. V.

COLFAX, SCHUYLER. Schuyler Colfax (1823–1885) was born in New York City, March 23, 1823. In 1836 the family removed to Indiana. In 1844 he bought the South Bend *Free Press*, changed its name in 1845 to *St. Joseph Valley Register*, and made it one of the leading Whig papers of the state. He was a delegate to the Whig national conventions of 1848 and 1852, and a member of the state constitutional convention of 1850. From 1855 to 1869 he sat in the United States House of Representatives as a Republican, from 1863 to 1869 holding the office of Speaker. In 1868 he was elected Vice-President with Grant, but was defeated for renomination in 1872 because of his sympathy with the Liberal Republicans. He was involved in the charges of bribery made by the Democrats in 1872, in connection with the Credit Mobilier (*see*) affair; and although the acts complained of were done before he became Vice-President, and his friends held him innocent of wrong-doing, a higher standard of political ethics was now demanded by the nation, and his political influence was at an end. He died at Mankato, Minn., January 13, 1885. See REPUBLICAN PARTY; SPEAKER OF THE HOUSE OF REPRESENTATIVES. References: O. J. Hollister, *Life of Schuyler Colfax* (1886); M. P. Follett, *Speaker of the House* (1896); W. A. Dunning, *Reconstruction, Political and Economic* (1906).

W. MacD.

COLLECTIVISM. Collectivism is a term used to express the economic theory of the ownership by the community of those agents of production—especially land and capital—which under private control may be used to the injury of society. According to Schäffle it "would distribute among all, of the common produce of all, according to the amount of social utility of the productive labor of each." But according to other writers this method of distribution, which distinguishes it from communism, is not an essential feature of collectivism. The essence of the theory is the transformation of private competing capital into united capital. The term is often used synonomously with, and as a substitute for, socialism. See COMMUNISM; SOCIALISM; SOCIAL COMPACT THEORY; STATE, THEORY OF. References: A. Schäffle, *Die Quintessenz des Socialismus* (7th ed., 1879); Leroy-Beaulieu, *Le Collectivisme* (5th ed., 1909); E. Kelly, *Government or Human Evolution* (1901), II, 250–272. K. F. G.

COLLECTOR OF CUSTOMS. The collector is the chief officer of a customs district, to whose authority every vessel on arrival from a foreign port is subject. All imported merchandise must be entered in his office and to him are paid the duties. He provides for classifying merchandise, for levying duties, and has the right to appeal to the Board of General Appraisers from the decision of the local appraiser as to the valuation of goods. At a port where there is no appraiser the collector also performs his duties. He acts as the disbursing officer of the Treasury Department in all matters relating to customs in his district. See FRAUDS ON THE TREASURY; MANIFESTS OF VESSELS; NAVAL OFFICER IN CUSTOMS SERVICE; SMUGGLING; SURVEYOR OF CUSTOMS; TARIFF ADMINISTRATION; VALUATION OF IMPORTED GOODS. Reference: T. J. Goss, *Tariff Administration* (1890). D. R. D.

COLLECTOR OF INTERNAL REVENUE. For the collection of internal revenue the United States is divided into 66 districts, each in charge of a collector. These officers receive salaries ranging from $3,125 to $4,500. As a rule the districts are divided according to state lines, but a few of the states in which the revenues are large are divided into several districts, as New York into 6, Kentucky into 5, and Illinois into 4. See REVENUE, INTERNAL. Reference: F. C. Howe, *Taxation and Taxes in the U. S. under the Internal Revenue System* (1896), 193. D. R. D.

COLLEGE. The American college is unique. No institution exactly corresponds to it in the educational systems of other countries. It has resulted from the adaptation to American needs of English and German conceptions of higher education. Accepting the usual division of education into primary, secondary, and higher grades, the education given by an American college must be classified as a mixture of secondary and higher education.

The fundamental distinction between university and college in the United States has not been kept clear. It is that the former does and the latter does not offer opportunities for advanced study to graduate students. In practice, many educational institutions assume the title "university" without offering a curriculum either extensive or advanced.

Most colleges in the United States, down to 1870 with a few unimportant exceptions, offered a four-year course consisting of prescribed studies. These studies were English, literature and rhetoric, Latin, Greek, mathematics, natural philosophy, chemistry, the elements of deductive logic, moral philosophy and political economy, psychology and metaphysics, with a little general history, and modern languages taught to a slight degree. The ancient languages and mathematics were the backbone of the course.

The college of today is decidedly different from that of half a century ago. Physical, natural, political and economic sciences, modern languages and history have been so extensively added to the curriculum that they constitute the major portion of the modern college course, and this has led to the extensive use of the elective system and also to the granting of new degrees, such as bachelor of letters, bachelor of science, and bachelor of philosophy, depending on the courses taken by the student.

Some critics of the modern American college would have the old-fashioned prescribed course restored. Since this is obviously impossible, other proposals are: (1) to make the under-graduate course entirely or almost entirely elective; (2) to allow students to elect any group of articulated studies selected by the faculty; (3) to require students to take prescribed studies or groups of a broad elementary nature. The various proposals are all being tried (1913).

The colleges first established in the United States were Harvard, (1636), William and Mary (1693), and Yale (1701). During the eighteenth century 21 such institutions were founded, nine before the Revolution and twelve after. From 1800 to 1829 there were 33 such foundations; from 1830 to 1864 there were 180; from 1865 to 1900 there were 244. In 1913 there are more than 800 institutions in the United States calling themselves "colleges" or "universities." The number of those institutions which, for the year 1908–1909, had an enrollment of 100 or more collegiate students or had an endowment of $100,000 was only 261.

The modern descendants of the early colleges which have grown into universities are to be found in the undergraduate arts and sciences department or academic department of the modern university. Modern representatives of the early colleges which have not become universities are illustrated by Dartmouth, Amherst, Williams and Rutgers. Types of more recently founded colleges are Beloit, Knox, Grinnell and Colorado Colleges. In general, the government of colleges is in the hands of a board of trustees, either self-perpetuating or elected by specified organizations. The board of trustees controls the finances, appoints the instructors, makes the laws for the government of the institution, and confers degrees. The instruction and discipline of the students, their admission and dismissal, and the recommendations for degrees have always been left in the hands of the faculty. The state governments participate only by granting charters and the right to grant degrees.

See DEGREES, ACADEMIC; EDUCATION OF WOMEN; EDUCATIONAL STATISTICS; SCHOOL FUNDS, STATE UNIVERSITIES AND COLLEGES, ENDOWED AND PRIVATE.

References: C. F. Birdseye, *Reorganization of Our Colleges* (1909); E. G. Dexter, *Hist. of Educ. in the U. S.* (1904); A. Flexner, *American College* (1908); C. F. Thwing *Hist. of Higher Educ. in America* (1906); A. F. West, *Am. Liberal Educ.* (1907); National Educ. Assoc., *Addresses and Proceedings*, 1911; U. S. Commissioner of Education, *Annual Reports* statistics of universities, colleges and technological schools; Paul Monroe, *Cyclopedia of Education* (1911). W. F. SLOCUM.

COLOMBIA. Colombia, discovered by Columbus on his fourth voyage, overrun by the Spaniards after 1508, was finally conquered by them and made the Province and finally the Viceroyalty of New Granada in 1718. In 1810 the serious struggle for independence from Spain was begun. Bolivar united Venezuela to this country, in 1819, under the name of the Republic of New Granada, which was joined by Ecuador in 1829, but the union was dissolved on Bolivar's death in 1830. The Granadine

Confederation, the United States of Colombia and the Republic of Colombia, were the names successively applied. The present Republic is situated between latitude 2° 40′ south and 12° 25′ north; and longitude 68° and 79° west (Greenwich), with an area estimated at about 450,000 square miles, and a population of 4,320,000, about ten per square mile. The present constitution was adopted in 1886, by which a federation of states was abolished and the unitary republican form of government established. The legislative branch consists of a senate and a house of representatives; the senate has three members for each department, elected indirectly by electors for a term of four years, and the house of representatives is composed of members elected by direct popular vote for terms of four years, one representative for every 50,000 inhabitants. The executive branch resides in the president (no vice-president), elected by the congress for a term of four years; he has a cabinet of six ministers; interior; foreign affairs; finance; war; public instruction; public works. The judiciary comprises a supreme court, located in Bogota, of seven judges appointed by the president for a term of five years, and there are also superior courts for each department, likewise appointed for term of four years. Politically the republic is divided into fifteen departments, two territories, and four *commisarias*, which are themselves divided into provinces and municipal districts, the heads of all being appointed by the president. The capital of the republic is Bogota. State religion is Roman Catholic. **References:** J. I. Rodriguez, *Am. Constitutions* (1905), II, 317–377; Pan American Union, *Bulletin* (monthly).

Albert Hale.

COLOMBIAN CANAL TREATY. February 15, 1847, President Polk transmitted to the Senate a treaty with the Republic of New Granada (later Colombia), which had been concluded by Benjamin A. Bidlack, chargé d'affaires, December 12, 1846. That date has usually been attached to the treaty, although it was not ratified till June, 1848. The correspondence was not made public till 1903.

The significance of the treaty was: (1) it was proposed by the South American power and accepted with some hesitancy by the United States; (2) it arose out of apprehensions that European powers would occupy or control the Isthmus of Panama. In addition to a commercial treaty of the ordinary kind there is therefore a mutual guaranty of the Isthmus, New Granada guaranteeing an undisturbed right of transit, by land or by a canal; while the United States guaranteed "the perfect neutrality of the Isthmus so as to secure free transit," and also "guaranteed the rights of sovereignty which New Grenada has and possesses over the said territory." It was expected at the time that Great Britain and France would join in the guaranty, but no such treaties were secured.

The United States repeatedly landed troops on the Isthmus to enforce the free transit thus guaranteed. In 1868 and 1870 efforts were made to secure more direct privileges on the Isthmus communication but were unsuccessful. The treaty provided for twelve months notice of abrogation, but no formal abrogation ever took place and the treaty was in force in 1903 when the Republic of Panama (*see*) was created.

See Canal Diplomacy; French Panama Canal; Panama, Republic of.

References: "Bidlack's Correspondence" first printed in *Senate Docs.*, 58 Cong., 1 Sess., No. 17 (1903); J. H. Latané, *Diplomatic Relations with Spanish Am.* (1900), 182–184; J. B. Moore, *Digest of Int. Law* (1906), §§ 337–339, *Am. Diplomacy* (1903); L. M. Keasbey, *Nicaragua Canal and Monroe Doctrine* (1896), 161–177; J. C. Rodriguez, *Panama Canal* (1885); bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), §§ 184, 206, 231; A. B. Hart, *Manual* (1908), § 80 (lect. 59); L. T. Chamberlain, "Chap. of Nat. Dishonor" in *No. Am. Rev.*, No. 2, CXCV (1912).

Albert Bushnell Hart.

COLONIAL AGENTS. Agents were sent to England by some of the colonies before the eighteenth century, but they were despatched to meet a particular crisis and were not permanent. With the establishment of the Lords of Trade (*see*) in 1675 the English Government began to demand such representatives, and the colonies generally acceded. In whatever way the agents were appointed originally, in the eighteenth century the colonial assemblies had gained the right to elect and instruct them; and thus they were the representatives of the popular feeling, often contradicting the official representatives of the governors. The duties of the agents were to represent the colonies before parliamentary committees, the Board of Trade (*see*), and Privy Council (*see*); to act as fiscal agents; to transmit information; and to ward off unfavorable legislation. See Colonial International Relations; Colonization by Great Britain in America; Revolution, American, Causes of. **References:** E. P. Tanner, "Colonial Agents in England" in *Pol. Sci. Quart.*, XVI (1901), 24–49; B. Franklin, *Writings* (1905–1907), *passim;* O. M. Dickerson, *Am. Colonial Gov.* (1912), 156, 266–267.

E. K.

COLONIAL CHARTERS. The charters of the British colonies in America are usually divided into three groups; corporation, proprietary, and royal.

The corporation type was tried in Virginia (1612) and Massachusetts (1629) both of which later became royal provinces, and in Connecticut (1662) and Rhode Island (1663).

In this type the territory and government was granted to a corporation resident in England, as for Virginia, or in the colonies, as for Connecticut. The frame of government provided for an elected governor, council, and assembly, with legislative powers, provided such were not exercised contrary to the laws of England. A second charter was granted to Massachusetts in 1691, but it closely resembled the provincial type.

By the provisions of the proprietary charters a single individual or group of individuals was substituted for a corporation. The Maryland charter (1632) is the earliest example of this type; in this the proprietor was granted the territory and government on quasi-feudal terms subject to rather vague restrictions, and was allowed to establish whatever form of government he desired. In general, after a period of experiments, the same type of local self-government was developed that was found in the other colonies. The restrictions, however, were increased in the later grants of New York (1664), Pennsylvania (1680), Carolina (1662) and Georgia (1732); but the principle remained, that private jurisdictions were created, exempt in varying degrees from the ordinary operations of royal control.

Direct government unrestricted by charter was the type toward which the home government attempted to force all the colonies. All the corporation colonies, except Connecticut and Rhode Island, and all the proprietary colonies except Maryland and Pennsylvania,—both of which for a time were forced to adopt this system—had become royal provinces in 1760. In these the governor and council, except in Massachusetts, were appointed by the Crown, while the people were represented in the assembly. The assent of the governor was necessary for all measures, and all laws which he signed were still submitted to the crown for approval. The governor was commander of the colonial militia and responsible for the execution of the laws.

Too much emphasis should not be laid upon the charters; for the commissions and instructions issued to the various governors, in so far as they granted rights and privileges, were as good guarantees as the charters. Thus the colonists of Virginia after 1624, and of New York, which as a separate colony never had the protection of a charter, developed systems of government as liberal as their neighbors'.

See Colonial Corporation; Colonial Government, Proprietary; Colonization by Great Britain in America; Colonization, Principles of; Constitutions; Ordinance of 1787; State Governments, Characteristics of.

References: E. B. Greene, *Provincial Governor* (1898), ch. i; E. Channing, *Hist. of the U. S.* (1908), II, 245–249; B. P. Poore, *Charters and Constitutions* (1877); F. N. Thorpe, *Federal and State Constitutions, Colonial Charters, etc.* (1909); L. P. Kellogg, "The Am. Colonial Charter" in Am. Hist. Assoc., *Report*, 1903, I, 189; significant extracts in W. MacDonald, *Select Charters* (1899).

Everett Kimball.

COLONIAL CORPORATION. Basis. — The corporate colonies of New England consisted of Plymouth (part of Massachusetts after 1691), Connecticut, New Haven (part of Connecticut after 1662) and Rhode Island. Whether owing their origin to settlement (as Plymouth, Connecticut, New Haven and Rhode Island) or to a royal charter (as Massachusetts) these colonies had their prototype in the organization of the chartered company. Even where mutual relations were settled by voluntary covenants, the methods of the usual company's general courts were instinctively adopted. The corporate colonies, however, differed from the proprietary (*see* Colonial Government, Proprietory) in that they were not worked for profit, and that the direction of their affairs did not lie with an authority resident in England.

The Massachusetts Company.—The transformation into a corporate colony appears in the case of the Massachusetts company, chartered in March, 1629, on the lines of the London Virginia company, and therefore seeming only another proprietary company. But, whether by oversight or by design, the clauses necessitating the residence of the corporation in England were excluded. Advantage was taken of this to institute a New England, wherein the true church might be established under appropriate political institutions; identity of religious conviction being substituted for the common commercial objects of a business association. By the removal of the patent, together with the officers and freemen of the company, to America it assumed directly all the functions of government; and, as Osgood says, "by losing itself in the colony became a fully developed organism." But in order that the religious ideal should be fulfilled, it was necessary that political citizenship should be limited to church members, even though by the change the letter of the charter was violated.

Further, the fusion of a company into a commonwealth involved the consequence—unless the colony was to be satisfied with the rule of an oligarchy—that the freemen, too numerous and too scattered to have effective power in the general courts, should act by deputy, by means of duly elected representatives. The relations of church and state were modelled on the lines of Calvin's *Institutes of the Christian Religion.* Democracy so far prevailed that all officers were elective and the equality of members of a congregation under Christ was recognized; but its practical predominance was arrested by the sacrosanct position of the

clergy, as interpreters of the divine oracles, and by the fact that the church members, with whom lay the government, seem never to have exceeded some one-fifth of the total population.

Local and Central Authorities.—Although the congregation, a body of worshippers known to each other and ready to answer for each other's worthiness, and the town, consisting of a detached group of duly qualified settlers, were the nucleus from which evolved the colonial community, the idea of unity prevailed from the first, owing to the conception of the state as a partnership in a common collective association. So strong was the hold of the central government that it claimed not merely to decide who should reside within its borders, but whether settlers, once admitted, should be allowed to take their departure. But if the strength of the corporate colonies lay in their identity of belief in religious and political matters, there was always the risk that the assertion of such identity might entail disagreeable consequences to those who were its victims. Connecticut, New Haven, and Rhode Island were, to a greater or less extent, the outcome of the dissidence of dissent. Rhode Island (1636) owed its foundation to the religious or political persecution of Roger Williams (*see*); and though Connecticut (1636) and New Haven (1638) mainly had their origin in economic causes, it is still noteworthy that their founders preferred to set up outside the jurisdiction of Massachusetts.

Rhode Island.—Rhode Island was exceptional as based on the idea of toleration. Otherwise, the corporate colonies closely resembled each other. In all, the towns (*see*) were in the main agricultural communities, containing none very rich or very poor. In all, the town community carried on its own local government with the aid of officials elected from its freemen. As a rule, lands were given by the colonial governments to the towns, which in turn distributed them to individuals. There was no recognition of the title of the Crown to the public lands by quit rents (*see*) or otherwise.

Status of the Colonists.—The relations of the colonists to each other were clearly settled by rules to which they might be presumed to be assenting parties. Even emigration from one to another corporate colony meant merely the substitution of similar, though new, religious and political ties. The New England Confederation of 1643 (*see*), defective as it was, showed a recognition of the community of interests among the New England colonies.

Status of the Colonial Governments.—Much less satisfactory were their relations with the home government. In intention and character they resembled the Greek *'αποικίαι* but the English authorities never accepted this view of colonization. The position of Massachusetts was regulated by the terms of its charter, but the legal position of Plymouth, and of Connecticut and Rhode Island, before they received their charters (1662 and 1663), was very doubtful. The English courts would probably have held their inhabitants to be mere unauthorized trespassers upon the domain of the Crown. Even where a charter existed, the attribution of powers was strictly construed. The powers of a charter once exceeded it was liable to forfeiture by the English courts, and the doctrine of *ultra vires* always threatened to undermine the position of Massachusetts. In this state of things, menaced by backsliders from within, and by the vigilance of the authorities in England, the state of the corporate colonies has been described as one of constant siege. The measures taken by them, right or wrong, were with the object of self-preservation. In the case of Massachusetts, a partial compromise was arrived at in 1691, when a royal governor was superimposed upon the corporate constitution. The other corporate colonies were not of sufficient importance to come into serious collision with the home government. Everywhere, however, the existence of conflicting ideals tended to store the materials of future controversy.

See Colonial Government, Proprietary; Colonization by Great Britain in America; Corporation Charters; Province, Royal, in America.

References: William Bradford, *Hist. of Plymouth Plantation* (several eds.); *Records of the Mass. Bay, 1628–1686* (1853–1854); John Winthrop, *Hist. of New England, 1630–1649; Records of the Governor and Company of the Mass. Bay, 1628–1686* (1853–1854); *Colonial Records of Connecticut* (1850–90); *Records of the Colony of Rhode Island,* (1856–1865); Roger Williams, *"Letters"* in Narragansett Club, *Publications,* V (1882), No. 2, H. L. Osgood, *Am. Colonies in the 17th Century* (1904), I; E. Channing, *Hist. of the U. S.* (1905), I; F. G. Palfrey, *Hist. of New England during the Stuart Dynasty* (1858–1864); B. Trumbull, *Hist. of Connecticut* (new ed., 1898); E. E. Atwater, *Hist. of New Haven to its Absorption into Connecticut* (1881); S. G. Arnold, *Hist. of Rhode Island and Providence Plantation* (new ed., 1894); G. G. Howard, *Local Constitutional Hist. of the U. S.,* I, *Development of the Township Hundred and Shire* (1889).

H. E. Egerton.

COLONIAL GOVERNMENT, PROPRIETARY. Basis.—The proprietary colony was the outcome of the financial and economic weakness of the English Government in the sixteenth and seventeenth centuries. Though the monarchy had won in the strife with feudal anarchy, it had not attained to an organization that could dispense with feudal precedents. Consequently, on entering the field of colonization, it could only act by granting to individuals or to aggregates of individuals extraordinary privileges in return for extraordinary

services. The Elizabethan grant to Raleigh (1584) set up an *imperium in imperio;* the rights of the Crown, after payment of a royalty of one-fifth of minerals found, lying dormant, unless revived by the misconduct of the grantee or his assigns. Raleigh was given, for the public safety, "full power to correct, punish, pardon, governe and rule . . . as well in causes capitall or criminal, as civil . . . according to such statutes . . . as shall be by him . . . established."

Aggregations.—The Elizabethan grants were made to individuals; but these were not able to take advantage of their grants without outside assistance; and therefore it was natural that those sharing in the burden should be included in the patent. The chartered company was already recognized for trading purposes, and it was an easy step when colonization was intended to give collective proprietorship to its members. But such an aggregate of private individuals would not possess the influence of a single court favourite, and, therefore, under the Virginia charter of 1606, it was sought to reserve governmental powers to a royal council, combined with local councils consisting of its nominees. Such a system proved unworkable; and the charters of 1609 and 1612 in effect gave to the company the full control of the colony. In England the management lay with the popular quarterly courts; in America with the governor. Abuses in the colony may have led to the demand for a representative assembly, though, with the foundation of new settlements and the evolution of private ownership of land, such a demand became natural. The quarrels in the Virginia Company in London, and its misfortunes in America gave excuse for the Crown to cancel its charter (1624); and so the first royal province was established in America, by appropriating the fruits of private effort.

Grants to Individuals.—A return was then made to the system of individual grants. The grant of Maryland in 1632 was, in outward form, a reproduction of the County Palatinates of mediaeval Europe. Baltimore and his heirs became "sole and absolute lords and proprietaries" of the province with power of subinfeudation and the erection of Courts Baron and view of frankpledge. But in the freer air of America, with the incidents of feudal tenure directly excluded, and in the absence of a hereditary aristocracy, the outcome was very different from European models. Moreover, laws were to be erected in Maryland, with the advice and assent of the freemen of the province, or of their deputies. The grant of Maine to Gorges (1639) proved abortive; but that of Carolina in 1663 to eight leading public men was a conspicuous attempt to combine imperial expansion with the promotion of material private interests. The fundamental constitutions of Shaftesbury and Locke sought, though in vain, to revive feudal institutions, and to arrest the growth of pure democracy. On the other hand, the later colonies of New Jersey and Pennsylvania attempted to combine democratic institutions with the proprietary system.

Conflict of Interests.—The weakness of that system lay in the conflict of interests between the proprietor as tenant for life of certain material interests, and the proprietor as trustee for the interests of an infant community. The high aims of William Penn, and the very democratic character of his "holy experiment" must not blind us to the fact that even in his case there was a natural conflict of interests between the proprietor and the people; while to give to the people an increasing share of governmental powers served rather to aggravate than to allay economic grievances. In brief, from the point of view of the settler, proprietary colonies were objectionable because they set up private interests which clashed with those of the community. Thus the payment of quit rents (*see*) was more tolerable when it was a tax payable for public services than when it was in the nature of a private debt.

Status of the Governments.—From the point of view of the home government they were objectionable, because, in their case, there was difficulty in enforcing the royal commands; and because on questions such as the working of the trade laws, the interests of the proprietors might be directly opposed to those of the parent state. The general tendency was for proprietary governments to become royal governments, and though Pennsylvania and Maryland were still proprietaries at the time of the Revolution, in the former the friction between the proprietors and the people had been a constant scandal; while in both provinces English legislation had secured a more effective control where imperial questions were at issue.

See Colonial Corporation; Colonization by Great Britain; Province, Royal in America.

References: Wm. Macdonald, *Select Charters Illustrative of Am. Hist., 1606–1775* (1899); S. M. Kingsbury, *Records of the Virginia Company* (in progress); *Calvert Papers* (1906), (cited as *Fund Publications*, No. 1, 2), *Archives of Maryland* (1883); "Shaftesbury Papers" in South Carolina Hist. Society, *Collections*, V (1897); "Letters of W. Penn and Correspondence between W. Penn and J. Logan" in Hist. Society of Pa., *Memoirs*, I, IX, X; *Pennsylvania Archives*, vols. for *1852–1856;* H. L. Osgood, *Am. Colonies in the 17th Century* (1904); J. L. Bozman, *Hist. of Maryland, 1633–60* (1837); N. D. Mereness, *Maryland as a Proprietary Government* (1901); E. McCrady, *History of South Carolina under the Proprietary Government, 1670–1719* (1897); F. L. Hawks, *Hist. of North Carolina* (1857–8), II; R. Proud, *Hist. of Pennsylvania, 1681–1742* (1797–8); W. R. Shepherd, *Hist. of Pro-*

prietary Government in Pennsylvania (1896); B. Franklin, *Writings* (1905–1907).

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COLONIAL INTERNATIONAL RELATIONS. Informal Relations.—None of the European colonies in America ever had the acknowledged right to enter into negotiations with their neighbors, or to make diplomatic agreements. Between colonies of the same nation there were understandings and sometimes agreements as to the return of fugitive criminals and slaves; and new comers from sister colonies were received on favorable terms, though never with an acknowledged right to acquire citizenship in their new domicile. In the English colonies there was constant interchange of communications, particularly on boundary questions; and neighbors, such as Pennsylvania and Maryland, tried to work out their difficulties by conferences. Where there was no agreement reached, and sometimes in the teeth of an agreement, the government in England made the decision (*see* Boundaries of the United States, Interior).

Combinations of Colonies.—Several combinations at various times existed among the English colonies, of which the most notable was the New England Confederation (*see*) formed in 1643, which was virtually an alliance of the four constituent colonies against the Dutch; and furthermore was a feeble federal government. The commissioners met at stated intervals in one or another provincial capital. The home government, in 1684, eventually put an end to this unauthorized combination.

In the eighteenth century, aside from joint meetings of colonial representatives to arrange common treaties or wars with the Indians, these intercolonial relations were unimportant. The colonial agents (*see*) in London, however, were a kind of public ministers, acting under instructions from their colonies.

The right of the colonies to make agreements with Indian tribes, was always recognized and a great number of treaties were negotiated, one of the latest and most significant being the treaty of Fort Stanwix, negotiated by Sir William Johnson, for New York, in 1768.

Relations with Colonies of Other Nations.—Relations between the colonies of neighboring powers were unavoidable because of the distance from Europe and the presence of local causes of dispute. A Spanish ship came near breaking up the Jamestown colony at the outset. In 1613, Argall of Virginia took a Virginia Commission to break up the little French colony at Mt. Desert. Much later, the neighboring colonies of Florida and Georgia were engaged in war. The Seven Years War was preceded by a collision between the French and the Virginians at Great Meadows in the Allegheny Mountains in 1754. In many of the wars of the seventeenth and eighteenth century the colonies fitted out military expeditions without direct orders and made conquests of their neighbors' territory.

All such conquests were subject to the eventual disposition arrived at in European negotiations, and established by European treaties. In a few instances, however, the colonies sent formal embassies to their neighbors. The New England Confederation came to an understanding with the Dutch; and an agreement between Connecticut and the colony of New Netherland in 1650, is the basis of the present division line between the states of Connecticut and New York. Agreements were also made with the Dutch for the return of fugitives, particularly in 1646.

The most interesting diplomatic missions were between the French in Acadia and Quebec and the English in Plymouth and Massachusetts. La Tour visited Boston in 1643, and his rival French claimant d'Aulnay came and later sent a diplomatic representative. In 1651 the Jesuit father Druillette appeared in Boston to negotiate a treaty in behalf of the Province of Quebec, and was cordially received by the Puritans. After the Deerfield massacre of 1704, the Reverend John Williams was repeatedly sent to Quebec to negotiate for the ransom or release of the English prisoners.

In general, the colonies accepted the principle that they could enter into no commercial engagements, and had no authority to make war or peace; nor was the modern principle then followed out, of admitting a representative of a great colony as one of the negotiators of a treaty, such as has since become the practice in the relations of Canada to the United States.

See British North America, Diplomatic Relations with; Boundaries, Interior; Colonization by Great Britain in America; Diplomatic Agreements; Fugitive Slaves.

References: N. Y. Hist. Society, *Collections* (1814), III, Pt. I, 304–328; L. G. Tyler, *England in America* (1904), ch. xvii; M. G. McDougall, *Fugitive Slaves* (1891), ch. 1; J. Winsor, *Narrative and Critical Hist. of Am.* (*1884–1889*) *passim*, see index, *Mississippi Basin* (1895); A. B. Hart, *National Ideals Historically Traced* (1907), ch. xviii, *Am. Hist. told by Contemporaries* (1889), II; George Chalmers, *Collection of Treaties* (1790); A. T. Mahan, *Influence of Sea Power on History, 1660–1713* (1890); bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), § 164; A. B. Hart, *Manual* (1908), §§ 68 (lect. 7), 70 (lect. 167).

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COLONIAL UNIONS PREVIOUS TO 1775. Colonial union began in 1643 with the formation of the New England Confederation (*see*). The causes were: need of protection from the Indians, Dutch, and French; unwillingness of one colony to become subordinate to another;

lack of a common judge to settle disputes; and finally, cessation of direct control by King and council (1641). Without authority from England, commissioners from Connecticut, New Haven, and Plymouth met a committee of the General Court of Massachusetts, 1643, and agreed upon eleven articles. The plan provided that each colony supply money and soldiers for war in proportion to the number of male inhabitants between sixteen and sixty. Eight commissioners, two from each colony, determined questions relating to Indians, war, peace, leagues, charges, numbers of men and spoils; judged disputes between colonies and saw that escaped servants, prisoners, and fugitives from justice were returned. Lacking six votes, questions were to be referred back to the colonies.

The commissioners held the Indians, French, and Dutch in check, promoted religion and encouraged education. On the other hand, they lacked power to execute their decrees. Massachusetts was dissatisfied and domineering, for she was obliged to furnish about two-thirds of the soldiers and money for war, though having only two votes. She refused to be bound by the vote of six commissioners for war against the Dutch in 1652. The confederation was a loosely organized league. Dissensions and the revocation of the Massachusetts charter ended the league in 1684. The workings of the confederation helped develop several principles, such as the equality of each colony, the fugitive slave law, the assumption of undelegated sovereignty and notions of nullification, federation and union.

After 1684, progress toward union was made first through congresses with delegates from several colonies, and second through plans of union. At least eleven congresses were called (1677–1754) besides numerous conferences of governors with the Indians. These meetings were usually convened under the authority of the Crown to make treaties with the Indians and provide for defense. The Leisler Congress of 1690 had delegates from four colonies and voted to raise forces. The Albany, Stamp Act, and Continental congresses are treated elsewhere. Besides the formal meetings, the assemblies often correspond with each other on measures of interest. Plans of union were numerous. Between 1684 and 1775 at least twenty are recorded, and probably others were suggested. The best known are: Penn's, 1696–97; Coxe's, 1722; the Albany Plan (*see*) 1754; Galloway's 1774. The general motives for union were defense, settlement of colonial disputes, and regulation of the Indians; but the Crown wished to unite the colonies under one government, introduce a uniform system of administration, and raise a general revenue by port duties and internal taxation.

See COLONIZATION BY GREAT BRITAIN.

References: G. Chalmers, *Political Annals* (1780), 177–178; R. Frothingham, *Rise of the Republic of the U. S.* (1872), chs. ii-iii and appendix; J. Fiske, *Beginnings of New England* (1894), ch. iv; "Articles of Conf. of United Colonies of N. Eng." (1893), being No. VII of *Am. Hist. Leaflets*, A. B. Hart and E. Channing, etc.; "Plans of Union" (1894), being No. XIV of *ibid* (with bibliography).

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COLONIES IN AMERICA. See COLONIAL CHARTERS; COLONIAL CORPORATION; COLONIAL GOVERNMENT, PROPRIETARY; COLONIAL UNIONS PREVIOUS TO 1775; COLONIZATION BY GREAT BRITAIN IN AMERICA; States and Colonies by name.

COLONIZATION BY GREAT BRITAIN IN AMERICA

The subject divides itself into: (1) The American continental colonies before the Revolution (including the West Indies); (2) Canada, (including its expansion subsequent to the peace of 1763).

Political Motives.—The first English American empire dates from A. D. 1607, when Virginia was permanently settled. The motives at work were partly political and partly economic. Colonies were sought as a move in the war game against Spain; and though the peace of 1604 was a condition precedent to successful colonization, distrust and jealously of Spain were still predominant; the hope being that, by means of colonies it would be possible to put a "byt into our ainchent enymyes' mouth."

Economic Motives.—Of the economic motives at work the earliest and, at first, the most powerful, was the desire for gold mines. Even Ralegh believed that only by the possession of its own El Dorado could England wear down the strength of Spain. A further motive, almost as strong, was the hope of reaching the South Sea by a new route. An imperfect knowledge of longitude led to the belief that the journey from sea to sea was short and might be accomplished in about six days. Motives such as these of necessity disappeared as knowledge advanced; but they served their purpose in arousing popular interest during the difficult years of Virginia's beginnings. At the same time there were, from the first, the economic motives which afterwards took shape in the mercantile system. Colonization would give a stimulus to the English shipping industry, already suffering from the competition of its Dutch rival. Moreover, England was dependent for naval stores on the countries

adjoining the Baltic, with which at any time she might be at war, so that it was necessary to produce masts, cordage, pitch, tar and resin within the limits of the English Empire. Intercourse of trade between a mother country and its colonies was recognized as early as 1605, as rather "a home-bread traffique than a forraigne exchange." Nor was it only in naval stores that Virginia was expected to give good fruit. A preacher was no doubt reflecting the opinion of the day when he said that "it was not unlikely to be equal to Tyrus for colours, Basan for woods, Persia for oils, Arabia for spices, Spain for silks," etc. And, while colonies would supply valuable raw products for English manufacture and consumption, they would also give new markets where English goods might find a ready sale. The expectations formed of an Indian demand might be delusive; but, as the European population grew in numbers, the benefit of the colonial market to the English manufacturer was apparent.

But this very benefit exposed the weak point of the English colonial system. The colonies were considered as mere plantations, *colonies d'exploitation;* whereas, in fact, they developed into settlements of men, *colonies de peuplement.* The West Indian islands, which were occupied by the English from 1623 onwards, partook more of the character of plantations; but their English population was relatively greater in the seventeenth than in later centuries, and that population persistently claimed for itself representative institutions; government by a white oligarchy appearing natural to the notions of the time.

Economic Difficulties.—In any case the difficulties in the way of colonization were great. In spite of the assertions of contemporary pamphlets and sermons, it was scarcely required as a vent for surplus population. Throughout the seventeenth century it was difficult to obtain voluntary emigrants of the working classes, and a system of indented labor, under which the servant, in return for a free passage, undertook to remain with his master for a stated term of years at a fixed wage, played a leading part in the development of the southern colonies (*see* REDEMPTIONERS). In addition to the difficulty of obtaining an adequate labor supply, a further difficulty confronted the founder of new settlements. Granting that the economic arguments in favour of colonization were sound, it was still manifest that years must elapse before the investment became profitable. The seventeenth century state had neither the capital nor the credit with which to embark upon such undertakings. In consequence the individual proprietor or the joint stock company were necessary as skirmishers, before the main body of the organized state could enter the field. But even to the former the benefits accruing from colonization were precarious, so that it was fortunate that considerations other than economic, played their part in developing English America.

Religious Motives.—The Stuart kings may not have realized the principle of the colonies as safety valves for dissent; but in fact its working in the first years of Massachusetts produced such a kind of emigration as has never been before or since. The exodus from England of men of substance and of family "with the main of their estates and many of them with their entire families" left a lasting mark on the future of North America. Maryland, no less than New England, was the outcome of religious influences. Its founder was a Roman Catholic, and, intended as an asylum for Roman Catholics, it became largely the home of English nonconformists. Similarly, although the foundation of Carolina was primarily an economic speculation, intended for the material benefit of the eight proprietors, it proved necessary in order to attract population to hold out the prospect of religious toleration as well as of representative institutions.

The New England colonies (with the exception of Rhode Island) had found their strength in a community of opinion with regard to religious matters, the foundation of Pennsylvania by William Penn proved the attraction to new settlers of the principle of complete religious toleration. The Jerseys, though to a less degree, owed their strength to the same principle; and, though New York was at first the fruit of conquest, its cosmopolitan character was encouraged by adherence to the same policy of toleration. Nor was it only from those discontented with the forms of religion at home that America found settlers. Political causes worked in the same direction. Thus Virginia and the Barbados were strengthened by royalist immigrants, when the cause of the Parliament had triumphed in England.

Slow Progress.—In spite, however, of such aids the progress of the colonies was of necessity slow. We speak of them under names including vast areas; but, in fact, population was for long confined to certain scattered localities; while the war with the wilderness was fought under the most difficult circumstances. At first there was fear lest Spain should attack Virginia; the danger of massacre from Indians hung for many years over English America, and by the end of the seventeenth century there was added the struggle with France. The isolation and mutual jealousies of the English colonies forbade concerted action or policy, while imperial exigencies made such a course indispensable. The only new American colony in the eighteenth century was Georgia (*see*), founded by Oglethorpe (1732) as a home for insolvent debtors and as a barrier state against Spain.

Status of Colonists.—Meanwhile the question of the political status of the colonists was never satisfactorily answered. In leaving Eng-

land they had by no means forfeited the rights and privileges of English citizenship; but, if such rights and privileges could only be exercised in England, and their laws were to be made for them by an English Parliament, their position in fact became one of inferiority. According to the theories of English lawyers the colonies might be considered as part of the realm of England; but three thousand miles of sea and the existence of colonial assemblies gave the lie to theory. So long as imperial interference was mainly limited to matters of trade, the colonists acquiesced, though sullenly, conscious perhaps that laws were unavailing against the settled determination of the people. When, however, it was attempted to establish taxation by the British Parliament for imperial purposes, resistance gathered head, and the empire fell to pieces. Considering the small amount of emigration from England which went on in the eighteenth century and the want of sympathy and imagination shown by the mother country, the wonder is, not that the end came, but that the forces making for loyalty were as strong as they showed themselves. The reason probably was that the isolation of the individual colonies had hitherto prevented the development of an American patriotism.

Canadian Colonization.—With the birth of the United States, British colonization in America entered upon a new phase. Canada, conquered from the French, had been, hitherto, almost exclusively a French province, and, though the foundation of Halifax, in 1749, had been a notable achievement in systematic colonization, Nova Scotia had remained generally neglected. The coming of the United Empire loyalists caused the creation of New Brunswick (1784) and of a new British Western Canada. The separation of Upper from Lower Canada further stimulated American immigration; and when, in the nineteenth century, a great wave of emigration from Great Britain set in, the British colonies, in time, obtained their fair share of it; though at first the greater wealth and economic development of the United States inevitably had more attractions for emigrants of the working classes. At present (1913) the volume of immigration into Canada, both from the United States and from Great Britain, is very great; so that the waste places of the country are being filled up at a rate impossible in the earlier centuries of colonization.

Modern British Colonial Empire.—Still more startling is the contrast between the character of the old English empire and the new. The old had its *raison d'être* in the principles of mercantilism, though the theory was never pushed to its logical conclusions. The new was confronted after 1846 with the adoption of the doctrines of free trade by the mother-country; and, after some hesitation, recognized the view that, for fiscal purposes, the portions of the empire were practically almost independent states. The first empire had sought, though vainly, while giving representative institutions, to secure to the British governor the full control of the executive; the second, after a weak attempt to stereotype a paternal bureaucratic autocracy, recognized, by the grant of responsible government, the right of the daughter communities to the full management of their own local affairs. Under the old system democratic communities in America were confronted with an aristocratic and oligarchical Great Britain; under the new, the mother country has become in many ways almost as democratic as are the colonies. Under the first English empire it had been sought to tax the colonists; under the second, Englishmen at home were at first called upon to tax themselves on their behalf. The first English empire in America remained a collection of isolated and mutually jealous communities, the second evolved a federal constitution for British North America. Under the first there was discontent without an American patriotism; under the second imperial loyalty is compatible with a strong sense of Canadian nationhood.

Looseness of the Tie.—The two empires, however, have this in common, that both were of an amorphous and anomalous character. The present empire has become an alliance of kindred peoples, owing allegiance to a common King; but, so long as imperial policy is settled by the home government, and imperial charges mainly borne by the British tax-payers, the political position must continue provisional. It should be noted, however, that, whereas, in the period preceding the Revolution, relations between the mother country and the colonies tended to become steadily worse, at present the feeling on both sides is one of growing sympathy. A British empire in America in the strict sense of the term may never have existed in the past or in the present; but the present makeshift arrangement has many of the elements of most vigorous life.

West Indies.—In the West Indies the emancipation of the slaves seemed at first a death blow to economic prosperity; and for many years there was considerable depression; while politically the position of the whites is inferior to their position in the seventeenth century. Of recent years, however, owing partly to the agreement with regard to bounties on sugar, and partly to the cultivation of new products, the West Indies, including British Guiana, which was ceded by the Dutch in 1814, have shown some improvement, though their relative importance is small compared with that of their past. Closer trade relations with Canada are now being developed (1913).

See Boundaries, Interior; Colonial Corporation; Colonial Government, Proprietary; Colonial International Relations; Province, Royal, in America.

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H. E. Egerton.

COLONIZATION OF NEGROES. Before 1800 the presence of the African race in the United States was so unwelcome that suggestions were made that they be sent out of the country, first by Rev. Samuel Hopkins of Newport in 1773, then by Jefferson in 1776. In 1816 the American Colonization Society was organized with the avowed purpose of returning the Africans to their original country.

This society had a strong backing, particularly in the southern states: was aided by some state governments and by federal appropriations for returning to Africa negroes captured in transit. In the twenties the society formed a little settlement called Liberia on the African coast, and from year to year settlers were sent out by the society.

President Lincoln took up colonization with energy as a part of his general attempt to get rid of slavery during the Civil War, and a small settlement was made at Chiriqui on the Isthmus of Panama, and another unofficial settlement at Hayti. Both were total failures, and Congress declined to follow the lead of the President.

The American Colonization Society is still in existence and occasionally sends a cargo of negroes to Liberia. Some recent southern writers on the negro question, suggest that the negroes be colonized by assembling them in one state or states within the United States, but nobody is able to indicate the precise area. The negroes, almost without exception, oppose colonization, which would deprive them of home, accumulation and place in civilization; on the other side, colonization and settling would involve the enormous expense of carrying away ten millions of people, and would bring about a wrench to American principles through banishing American citizens, and would probably lead to the death by tropical disease of the greater part of such emigrants. Colonization does not seem to be an impending or a probable remedy for the negro problem.

See Abolitionists; Negro Problem; Slavery Controversy.

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Albert Bushnell Hart.

COLONIZATION OF VOTERS. See Voters, Colonization of.

COLONIZATION, PRINCIPLES OF

Definition.—According to Sir George Lewis "a dependency is a part of an independent political community which is immediately subject to a subordinate government," while "a colony properly denotes a body of persons belonging to one country and political community, who, having abandoned that country and community, form a new and separate society, independent or dependent, in some district which is wholly or nearly uninhabited or from which they expel the ancient inhabitants." If these definitions were conclusive the United States, in 1790, might have been a British colony and the Bermudas, though under the British colonial office, are today a dependency; Algeria, though represented in the French national legislature, is also a dependency and the Transvaal is not a colony. But history and usage, in spite of Lewis' classical definition and of etymology and official terminology, have made these two terms "interchangeable." Colonization, therefore, is here used in the general sense of expansion by means of political control and more or less extensive settlement whether military or civil; but we will find that there are different sorts of colonies or dependencies and that the study of principles of imperial policy involves immigration, the administration of regions where natives already swarm, and the contact of alien colonist with historical possessor. Thus principles of colonization depend not only on the character and equipment of colonizing peoples and on the conditions which prompt expansion, but also on the circumstances of life in the regions where colonies founded, on their past history, and on the size and natural qualities of their native populations.

General Factors.—First are four fundamental groups of factors affecting modern principles of colonization: (1) Progress of scientific discovery and invention. From the time when men began to carry the means to kindle fire till the present day, the natural restrictions on expansion have lessened. Successive inventions and discoveries have contributed to the defeat of separation and isolation, which are opposed to modern colonization and to the maintenance of imperial ideals. (2) Expansion of economic relations. Increase of population, the dying of domestic economy, growth of capitalism, and new labor problems have all added significance to this increasing knowledge of the world. For the appreciation of economic relations between one land and another, one zone or longitude and another, has led to that world economy, which, spreading from secluded valleys and inland waters finally has made civilization dependent on the life of the antipodes. And whether the world be that of the Phoenician sailor, of Sir Francis Drake, or of the modern merchant, the principles of colonization have answered to these economic demands. (3) Race. Through expansion there was also revealed to men the existence of other peoples, their women, religions, and governments. Human passions, antipathies of color, economic competition, differences in language, and social and religious friction have underscored this revelation till race contact has become a fundamental problem in almost every colonial system. The variety of this problem restricts illustration and comment; but three common phases require notice: (a) naturally, under novel and usually remote conditions, the stock of colonizing people has often tended to produce a decided change in civilization; and contact between succeeding generations of colonial born and their remoter kin who stayed at home has at times led to friction; (b) where colonization has taken place in regions already populated by large and diverse native elements the ultimately dominant colonists invariably have had to face complex affairs; (c) the situation has become even more difficult when later and successive immigrations of other and possibly servile peoples have each brought new and conflicting influences to bear. For it may become not only a matter of the relations of advanced and backward peoples, but a more equal contest between competing civilizations. (4) Government. The mutual influence of the political systems of colonizing nations and of the peoples in whose territories they have intruded has been marked; and the effect of colonial problems on home governments has been evident at various times. Opposition minorities, indignant regarding alleged violations of civil rights and hopeless of opportunity at home, have gone out to found colonies where they could find room for their own ideas of liberty. More recently the delicate adjustment of spheres of local and imperial or federal jurisdictions has stimulated new political conceptions and required novel administrative machinery. But principles of colonization are more directly defined by and revealed in the analysis of other aspects of historical expansion.

Motives and Methods.—(1) Over-population and social discontent as continuous factors have led to the emigration of a civil population, having a direct interest in economic self-betterment. Such colonization, especially in modern times, has promptly raised questions of local government, of imperial control and defense. Here various forces and agencies have operated, *e. g.*, (a) the central authority itself, (b) a chartered corporation possessed of territory and jurisdiction, (c) private or semi-

official societies for the promotion or direction of emigration, and (d) individual effort, whether humble or potent as in the case of the great colonial proprietor. (2) Often connected with such movements has been the establishment of special colonies where the maintenance of certain religious or social concepts has been the dominating factor. A powerful features of such colonization has been the notion of a conquest for God. Later, in marvelous yet complicating fashion the modern missionary movement, using different methods, has introduced additional religious and educational forces to colonial affairs. Religious agencies in the Hawaii and elsewhere have been, perhaps unconsciously, pioneers of empire. (3) The natural desire for adventure and acquisition has also stimulated advance; while love of war, self-defense against restless and provocative neighbors, and aggressive humanitarianism have often promoted imperial expansion. The advance of Alexander's empire, the extension of Roman, Arab, Mongol, Russian, British and American frontiers all recall first one and then another aspect of this matter. Its present importance is exhibited by scattered military and naval posts the world over, by the European control of vast African provinces, and the administration of Egypt and of the greater part of British India. (4) In penal transportation lies the fullest irony of colonial history, for the government which condemned and spurned has made use of the exile and the convict for imperial purposes. Thus, at times, America, Siberia, Australasia and New Caledonia have endured this method of plantation of colonists.

(5) But most influential to-day is still the old direct imperial economic motive and method. This is shown in three ways. (a) First is the home demand as exhibited in the search for bullion and jewels, in the desire by manufacturers for new supplies of raw materials, and the cry for food. Thus Roman Egypt, Spanish Peru, Dutch control of the Spice Islands, English Canada, the history of Californian, Australian and Alaskan mining booms, and in general the development of tropical colonies, all evidence in one way or another the continuity and the importance of these forces. (b) Colonial markets, as well, play a large rôle; the disposal of home products, and, as in the case of early Carthage and Hong Kong, the direction of trade with profitable regions have opened a special field of action both for productive countries and for those who take the middleman's toll. In such ways expansion has resulted from the demands of manufacturers of colored cloths in Tyre and Manchester, of armor and arms in Athens, Birmingham and Essen. For, though the history of colonial trade does not support the theory that trade necessarily follows the flag, the mercantile system, preferential tariffs, and free trade within the continental empire of the United States have in various ways exerted a great influence. (c) A less direct motive and method has been that of capitalistic investment. Such employment of surplus capital results in commercial agencies which may be the seed of colonies, and often leads bondholders and guarantors of state debts to become potential advocates of intervention, if not of annexation of the territories in which they are financially interested.

Classes of Colonists.—Here analysis is chiefly on the basis of economic relationship. (1) Men like La Salle, Lewis and Clarke or Captain Cook, who discovered valleys and harbors needed room; while Pizarro and Clive touched great fortunes by their capacity to command forlorn hopes amid teeming hostile populations. Colonization uses such men; it does not keep them. (2) Later, government representatives, both civil and military, are often important in inverse ratio to their number. For native populations judge empires by lonely men, whether administrators in early Roman Britain, along the Amur, in German Southwest Africa, or Sarawak. Furthermore, the governor of Gibraltar is greater in his fortress than is the premier of Canada at Ottawa. (3) But usually the farmer is the backbone of colonial society. Patient, orderly, not given to crowding, but keen for political gossip, his hand lies on the colonial history of the upper Mississippi basin, of Cape Colony and of western Canada. (4) The planter, however, is chiefly dependent, through his greater need of capital and labor, on the imperial economic and political system. The very isolation of his large estate, whether it be a tobacco plantation in early Virginia or a tea plantation in Ceylon, emphasizes his interest in large matters such as tariffs and race relations. (5) Another class, including men who breed cattle, sheep, horses or ostriches, also requires large areas; and whether wool or beeves are for sale communications are important. But to this class labor is less essential; and in a naturally free society governmental connections with the home land rest more lightly; as witness the history of many western American colonies or territories and the development in the middle and later periods of the history of New South Wales.

(6) Unless governmental policy prevents, as in the case of Spanish mining in Mexico and Peru, the discovery of metal or mineral deposits, especially in temperate zones, results in rapid colonization. A democratic, if restless, town life promptly develops; and the reaction on other economic classes is quick and wide, as in the case of California and Australia. Yet the contrasts in the labor situation in South America, the Transvaal and Alaska prove how difficult is generalization. In any case the mining of iron and coal rather than of gold or diamonds makes a difference for the home country by offering probable stimulus

to colonial manufactures, possibly in competition with those of the mother country. (7) For raw materials available in the colony and attractive to industrial immigrants may tend to deprive home manufacturers of supplies while the younger and more ambitious workers are drained off to the colony. The eighteenth century restrictions would to-day be useless, though tariff policies would be affected. Moreover, in regions where native industry is already prosperous, competition by other parts of the empire stimulates racial questions in their ugliest form. Yet on the whole the industrial class, closely bound to capital and thickly grouped, gives welcome support to self-government as well as to the economic development of the colony. But tariffs, foreign policy, and defense under such conditions tend to appear rather as local than as imperial matters; though the next generation can better judge of these questions in Canada and perhaps elsewhere. (8) The merchant class sometimes anticipates other groups, where a considerable native population already exists; he appears first as the agent of home or foreign commerce, whether as slaver, fur trader, or spice factor, selling also home products, rum, cheap jewelry or arms. Later, at ports of call or outlets of productive inland colonies such as Quebec, New Orleans, Cape Town or Singapore, he stands for imperial connections. But in colonies where large immigration is rapid the local merchant is more important because of his permanent demand for order and stability and because he serves the widest immediate needs of the colony.

(9) So far we have been considering the free colonists; yet the unfree have been a large factor, certainly, in tropical colonization. For though slavery is ancient, modern slavery, as the western world has known it and profited by it, is essentially, both as a labor and as a trade question, a colonial affair. Lack of immigrant laborers, climate, and the inefficiency of local native labor, even where such labor existed, led to the economic demand which promoted forced servile immigration and the development of the slave trade. The indentured servitude of early English colonization in America and convict colonization in Australasia gave way before voluntary immigrants who could successfully compete in an open labor market. But negro slavery was on a different basis; for the result was a double standard of administration and morals—one for the master and another for the slave. Later, at the abolition of slavery, came ruin to the colony till, if possible, a new set of economic relationships and interests could develop. Meanwhile flamed the pent questions of race, efficiency, and equality; and colonial and imperial interests as well as those of the laboring class were involved. The most successful substitute for the slave in tropical colonies has been the indentured coolie, as supplied from overcrowded labor markets of the East to British West Indian islands and to British Guiana and Mauritius. Here, as in somewhat different fashions in Ceylon, the Straits Settlements and, until December, 1905, in the Transvaal, the practice of government supervision has tended to reduce evils. A variety of interests are served by the tendency of these imported laborers to form a continuing and stable element in the places to which they go first under temporary contract. Nevertheless, the labor question in the tropics remains importunate.

Native Elements.—These are not merely physiographic but also human. An analysis shows at least three types of native organization and civilization, with which the colonial power has frequently come in contact. The results have been varied but can be summarized. (1) Colonization has taken place in regions hitherto controlled by nomadic tribes, *e. g.*, the English in North America and Australia. Here the victory of the efficient colonist coming as planter and herdsman forces on the native one at least of four results: (a) extinction; (b) restriction on a government reservation; (c) a quasi-conversion to the habits of the colonist; (d) possible absorption by the colonial population. In any case only the earlier generations of colonists are vitally affected and policies of war or benevolent despotism are only temporarily significant, for such native population is necessarily sparse in a large area.

(2) When the tribal organization is static the natives are often warlike and efficient. Here colonial pressure may force (a) real migration; or (b) imported disease and massacre may clear the way for further colonial expansion. (c) But usually the result is different. Hostility may last for a long time, especially when the intruders are comparatively few in number, *e. g.*, the French in Algeria, the English in South Africa, the Dutch in Java and Sumatra and the Spanish in the Sulu Islands. Under such conditions military rather than civil administration has the larger sphere. (d) Alliance on more or less unequal terms has been common on the successive frontiers of British India and in Russian central Asia. (e) Permanent settlement, however, has resulted only when the colonists have won control by adopting to a greater or less degree, native ideas and methods of administration, as is the case in Annam, the Sudan and Baluchistan.

(3) Lastly is the case of a state organization, where political history and religion have given strong support to the ethnic and linguistic inheritance of an established and probably large native population. Under such circumstances colonial immigration is likely to be small and to be confined chiefly to the official, planter, and commercial agent classes. The results of expansion in such a polity are

frequently (a) subjection, only at great cost to the dominant colonial power, accompanied by probable continuance of thinly veiled military government, or (b) a system of subsidiary alliance whereby the imperial power acquires control of foreign policy and general military direction on terms of practical autonomy by the native state, as for example, in the varied arrangements between the British Government and the protected princes of India. (c) Where the stability of the native rulers is less certain or when the cost of conquest may be discounted, real administration rather than ultimately successful advice by the invader becomes possible, as in the case of the previous type of tribal organization, by the grafting of ideas and methods from diverse sources till a system of government is produced which is capable of enduring local conditions and of satisfying traditions at home as well as imperial conceptions. One of the greatest difficulties under such conditions arises, however, not from the impervious quality of the native population but from their absorption of perverted ideals and pernicious habits from the foreign, dominant colonizing people. Native revolts, nationalistic agitation, and hybrid complications are sooner or later almost inevitable. Under such circumstances questions of racial equality and religious and educational propaganda become significantly influential. The recent history of Asia and Africa teem with illustrations.

Forms of Control.—(1) The simplest way is direct and complete control by the supreme government. This is not confined to military and naval posts like Gibraltar, Guam, and Kiau-chau, where local executive and legislative powers are vested in the same appointed authority; for it exists where the backward or dangerous character of the widely scattered native population encourages this exclusive system, for example in the Anglo-Egyptian Sudan, and German East Africa. (2) But while both the executive and a considerable part of the legislature remain in appointed authority, in many tropical colonies local elements are admitted to the government. Thus, representatives of influential sections of native society, as well as of planting and commercial colonists, are appointed to the legislative council in Ceylon, Honduras, and Kamerun, and in the Philippines, under American government, they were appointed even prior to 1908. (3) The administration of such protectorates (*see*) as are practically included in colonial empires, even when without formal treaty or legal basis, usually implies the lack of a local stable political system. Yet, though the executive and dominant policies of the region are directly controlled by the foreign or colonial authority, a varying degree of participation in internal and civil matters on the part of native authorities is quite common, *e. g.*, Egypt, Tunis, and the Federated Malay States. (4) The addition of locally elected representatives to the colonial government, though not interfering with direct control by the home government by means of appointed governor and council, marks a step toward autonomy. This was provided by the ordinance of 1787 for the Northwest Territory, the first American colony under the control of the Federal Government, and exists in Porto Rico in many of the British West Indian islands, in New Caledonia, Malta, and Mauritius.

(5) Indirect yet ultimate control by the home government through the medium of a chartered corporation is rare to-day, but early British colonization in America affords many examples. For purposes of contrast and comparison the British South Africa Company in Rhodesia and the British North Borneo Company are noteworthy. As in earlier days, the chartered power has set up such system of government as the terms of its grant, policy and local conditions invite. (6) Ultimate but indirect control by the home authorities conditioned by local yet defined self-government involves more clearly the general principles and policy of the sovereign government. For in an imperial system autonomy can, in the main, chiefly increase as it approximates in principle, if not in method, to an original home standard. In Newfoundland (*see*) the system of cabinet responsibility permits the appointment by home authorities of a colonial governor whose power is small, while on the other hand it illustrates the expansion of the political principles and policy of the mother country. On different lines the same is true of the history of the colony, now state, of Arizona. (7) The extension of this maxim by a constitutional federal union does not result in unnesessary limitation of provincial self-government nor need it strain the connections of the central authorities with the local federation. This system has been attempted with modifications in the imperial and colonial history of the United States, as well as of Canada and Australia. Indeed if British imperial federation ever comes it will be because of the example set by British colonies, past and present. (8) There is a legislative connection between France and Algeria, Réunion, and the French West Indies, whereby the colonies are represented in the home legislature; but this does not, at present, seem applicable to other colonial empires, nor, indeed, to other parts of the French dominions. Such questions would be raised by the proposal to admit Porto Rico or the Philippines to voting representation in the Congress of the United States.

From this variety of factors, under diverse conditions and through long centuries, principles of colonization have developed not as a matter of theory, but as the result of experience. Their definition is to be found in the analysis of their origin and the history of their application.

See Colonial Corporation; Colonial Government, Proprietary; Colonization By Great Britian; Dependencies; Territories of United States, Organized; Trade Follows the Flag.

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Alfred L. P. Dennis.

COLORADO. Early History.—The connection of Colorado with the United States begins with the explorations of Pike (1806) and his successors. The fur traders followed. The earliest settlers were Mexicans: three permanent settlements were made by them in the Rio Grande Valley—the earliest, a colony of farmers near the New Mexican border (1852), and the largest, the community of Guadaloupe (1854). The Anglo-Saxon settlement began in the autumn of 1858 due to the discovery of placer gold in considerable quantities in Dry Creek, near the southern boundary of Denver, in what was then the western part of Kansas Territory. Before the spring of 1859 town companies had been organized and towns planned on the sites of Denver, Boulder, La Porte and the eastern section of Pueblo. A throng of fortune seekers came to the district and within two years the eastern mountains had been fairly thoroughly explored and the towns of Golden, Central City and Colorado City had begun their existence as centers of the mining industry.

The government was at first purely an emergency organization in the hands of the people. The territory of Jefferson was formed in 1859 and an attempt was made to frame a constitution and organize a state government for the district. This plan the people rejected, preferring the territorial form of government. Unsuccessful attempts were made in 1859 and 1860 to have bills passed by Congress for the formation of a regular territorial government. In 1861 Congress finally passed the organic act for Colorado Territory, which received the President's signature on February 28. The new territory was formed of parts detached from Kansas, Nebraska, Utah and New Mexico territories.

The agitation for the formation of a state government was almost continuous during the territorial period. In 1864 Congress passed an enabling act which the people rejected; twice President Johnson vetoed bills for the formation of a state government in Colorado. After many failures Congress, in March, 1875, passed the final enabling act. A constitution for the new state was framed early in 1876, and was adopted upon July 1. This constitution, considerably amended, forms the basis of the government of the state to-day. A few of the original provisions, since amended, are of interest. Amendments could not be proposed to more than one article of the constitution by any session of the general assembly. The sessions of the legislature were limited to forty days. Women were allowed to vote at school district elections and to hold school district offices and it was also enacted that the legislature could extend the full suffrage to them, provided that such act should be first approved by the qualified male voters.

Present Government.—The executive power is vested in a governor, lieutenant-governor, secretary of state, auditor of state, state treasurer, attorney general, and superintendent of public instruction. These are all elected for two years by popular vote. The powers and duties of these officials are for the most part those usually granted in other states. In addition the governor has the power of vetoing any item in appropriation bills. As most of such bills are reserved for passage until the end of the legislative session, this gives him, in practice, an absolute veto upon the items of public expenditure. The state is overburdened with commissions and semi-independent boards and departments. There are over thirty such executive institutions. There are the usual examining boards for physicians, dentists, nurses, accountants, architects, teachers, druggists and, in addition, boards for the examination of barbers and horseshoers. The latter board held no examinations in 1910 or 1911 because of a decision against the constitutionality of the statute creating it. There are various boards with powers of inspection and supervision of coal and metalliferous mines, boilers, factories, live stock and sanitation. The civil service commission in 1912 secured, by the initiative and referendum, the adoption of a drastic civil service law. There is also a conservation commission with merely advisory powers, a railroad commission, and a bureau of immigration and statistics, which was created to advertise the state. In 1911 a tax commission was created with supervisory powers over all officials who have anything to do with the collection of taxes; it has also control over the taxation of quasi-public corporations, a power formerly vested in the state bureau of equalization. Because of the multiplication of boards and the lack of funds available for state purposes, these depart-

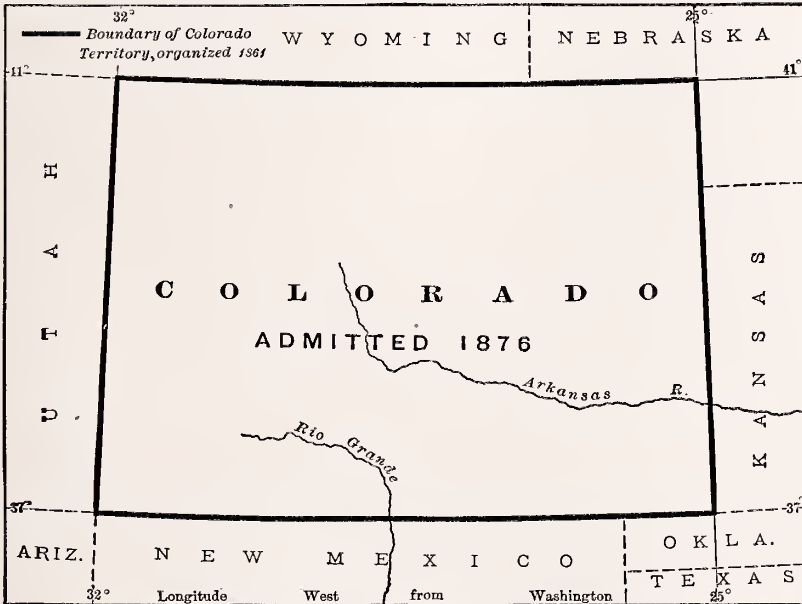
ments are frequently inadequately supplied with money and can only partially accomplish their assigned work.

The legislative power is vested in a general assembly consisting of a senate and house of representatives. Senators are elected for four years, one half renewed biennially; representatives for two years. By a constitutional amendment of the year 1910 both receive $1,000 for the biennial period and the actual and necessary expenses of travelling. The number of members of the general assembly is limited to one hundred. There is no limit now placed upon the length of the legislative sessions. The legislature meets on the first Wednesday in January of each alternate year. In the senate, committees are elected by the whole house, not selected by the speaker. In 1910 an amendment providing for the initiative (*see*) and referendum (*see*) was adopted; and in 1912, the recall of state and local officers and of judicial decisions.

The suffrage is universal and equal. In 1893 a law was referred to the people, as provided for in the constitution, and passed, granting to women the right to vote at all elections. A constitutional amendment to the same effect was adopted in 1902. There are no property, educational or tax paying qualifications. By an amendment of 1906 voting by machines (*see* VOTING MACHINES) was made permissible and they have been used in various parts of the state. Since 1912 all elective officials are subject to recall.

The judiciary consists of a supreme court of seven judges elected at large for ten years, of thirteen district judges elected for six years, and of one judge for each county elected for four years. At the present time (1913), there is a court of appeals appointed by the governor for four years. This court is, however, a purely temporary institution created to assist the supreme court in clearing its docket. In each district there is an elected district attorney. Justices of the peace with limited jurisdiction are the basis of the system.

By an amendment of the year 1902 provision was made for home rule in the cities of the first and second classes. Though normally governed by the general laws passed by the legislature, they may, if they so desire, draw up and adopt their own charters. Denver, Colorado Springs, Grand Junction, Pueblo, and Durango have availed themselves of this right, all of them having adopted the commission plan of government. Local government is of the county type, with from three to five commissioners according to the population. The counties are divided into townships, which are not important for administrative purposes, their chief duties being connected with the care of schools and roads.



BOUNDARIES OF THE STATE OF COLORADO

Political Parties.—Colorado is listed among the doubtful states in politics. It may be said to have been normally Republican with a leaning towards radical political theories. From 1876 to 1888 Colorado voted the Republican ticket in presidential elections. In 1892 it voted for the People's party candidate, Mr. Weaver, and in 1896 and 1900, during the Free Silver movement, for Mr. Bryan, this action being largely due to local mining conditions. Mr. Roosevelt received the electoral vote in the state in 1904, and Mr. Bryan in 1908.

Since then the Democratic party has had control of the state and of most of the local offices. In 1912, the six electoral votes were cast for Woodrow Wilson, the Democratic candidate.

Population.—In 1860 the population was 34,277; in 1890 it was 412,249, in 1900, 539,-700; in 1910, 799,024.

See CONSTITUTIONS, STATE, CHARACTERISTICS OF; STATE GOVERNMENTS, CHARACTERISTICS OF; WEST AS A FACTOR IN AMERICAN POLITICS.

References: J. C. Smiley, *Hist. of Denver* (1901); D. F. Hall, *Hist. of the State of Colorado* (1889–1895); R. G. Dill, *Political Campaigns of Colorado* (1895); F. L. Paxson, "The Territory of Colorado" in *Am. Hist. Review*, XII (1906), 53–65; J. B. Phillips "The Population of Colorado" in University of Colorado, *Studies, V* (1908), 197–219; F. N. Thorpe, *Federal and State Constitutions* (1909), I, 463–518. JAMES F. WILLARD.

COMBINES. A term popularly applied, first to combinations of individuals, firms and corporations, but also less correctly to organized corporations and trusts. A syndicate may also be called a combine; but in general, the term is reserved for more stable and permanent concentrations of capital. The term is also frequently used in politics to denote an agreement between several politicians or groups to throw their influence and the votes which they control to one object. See CORPORATION, PUBLIC; LOG ROLLING; MONOPOLIES; TRUSTS. D. R. D.

COMEOUTER. The name originally applied to certain religious dissenters or radical religious reformers who separated themselves from an established organization. Such a group flourished in New England, about 1840, including that group of non-resistance Abolitionists who advocated "coming-out" from the church and the state because of the attitude of both toward the slavery question. Also applied to ultra-radical reformers, particularly in political and religious matters. O. C. H.

COMITY, FEDERAL. The term comity, as employed in American constitutional practice, has reference to the recognition and enforcement which the Federal Government gives to the public acts and records of the individual states of the Union, and to the recognition and enforcement which these states give to one another's acts and records. In some instances this recognition and enforcement is one purely of "comity"; in others, it is a legal obligation imposed by the Federal Constitution and by Congressional statute. See CONFLICT OF LAWS; EXTRADITION, INTERSTATE; INTERNATIONAL LAW, PRIVATE; INTERSTATE LAW; JUDGMENTS, INTERSTATE RECOGNITION OF. **Reference:** D. Rorer, *Am. Interstate Law* (2d ed., 1893), 6, 7, 266. W. W. W.

COMITY, INTERNATIONAL AND INTERSTATE. Although the courts of a country are exclusively subject to the commands of the local sovereign, it often happens that a suit cannot, because of some foreign element in it, such as the foreign nationality or domicil of a party, the foreign place of origin or of performance of an obligation, or the terms of a particular contract, be justly determined without invoking a rule of foreign law. The foreign law does not, in such case, operate of its own force, but is said to be admitted on the principle of comity. This term, so far as it suggests mere courtesy, is misleading, since comity is now conceded to be a positive obligation, which nations are not at liberty to disregard. It is subject to the qualification that one country is not required to enforce the penal laws of another or to apply a rule that violates its own public policy. This qualification is materially modified as between the states of the United States not only because of their federal relation, but also because of the express provisions of the Constitution: (1) that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State" (Art. IV, Sec. i), and (2) that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States" (Art. IV, Sec. ii. ¶ 1). See COMITY, FEDERAL; COMMERCE, INTERNATIONAL; CONSULAR SERVICE; EXTRADITION, INTERNATIONAL; EXTRATERRITORIALITY; INTERNATIONAL CONGRESSES; INTERNATIONAL LAW, PRIVATE; MOST FAVORED NATION CLAUSE. **References:** F. Meili, *International Civil and Commercial Law*, (Kuhn's translation, 1905), 137–142. J. B. M.

COMMANDER IN CHIEF. Supreme command and control over the land and naval forces of the United States is vested in the President, in virtue of the requirement of the Constitution that "the President shall be commander in chief of the Army and Navy of the United States and of the militia of the several states when called into the actual service of the United States" (Art. II, Sec. ii, ¶ 1). This control is habitually exercised through the Secretaries of War and of the Navy, who represent the President in the administration of their respective departments and in the conduct of military and naval operations. Actual military command is exercised by officers of the Army and Navy, of suitable rank, who are selected by the President for that purpose and charged by him with the exercise of particular commands. During the quarrel between Congress and President Johnson, a statute was passed requiring all orders from the President to pass through the commanding general, but this has commonly been considered an interference with the constitutional powers of the President. See MARTIAL LAW; MILITARY

LAW; MILITARY DISCIPLINE; MILITIA; OFFICERS, MILITARY AND NAVAL; WAR, CARRYING ON; WAR, DEPARTMENT OF; WAR POWER, CONSTITUTIONAL; WAR POWERS OF THE PRESIDENT; WAR, SECRETARY OF. **References:** H. C. Black, *Constitutional Law* (1895); C. M. Clode, *Military Forces of the Crown* (1869), II, ch. xxvi; William Whiting, *War Powers under the Constitution* (10th ed., 1871), 66–82.

G. B. D.

COMMERCE, AMERICAN, MOVEMENT OF

Total Movement.—Though the domestic market, fostered by law and by natural advantages, has long been predominant in American commerce, a world's market has been developed, and the foreign trade has become of national and international importance. Exports, of merchandise have grown from an aggregate value of $1,381,719,000 in 1902 to $2,204,322,400 in 1912, an increase of 59.5 per cent and during the same decade the imports of merchandise advanced from $903,320,948 to $1,653,264,934, or by 84 per cent. Since the later seventies, the annual balance of trade, with a very few exceptions, has been in favor of the United States. In the fiscal year 1912, the excess of exports aggregated $551,057,500. The predominance of Europe as an American market is manifest; the United Kingdom alone purchased $564,372,000 worth of American commodities in the fiscal year ending June, 1912, and Germany purchased goods valued at $306,959,000. However, there has been a gradual movement from European to non-European markets. The export trade with Europe has increased, but that with Canada, Argentina, Chili, Mexico, Cuba, Brazil, China and Japan has on the whole grown more rapidly.

Movement by Countries.—Owing to the larger demand for tropical foodstuffs and spices, such as coffee, sugar, tea and fruits, and for other non-European articles, such as wool, rubber, fibres, hides and skins, etc., the position of Europe in the import trade is less commanding. The same movement, however, as between European and non-European countries has occurred, though the European trade has also increased. The foreign trade with the continents during the last decade is shown in the following table:

	Exports of Merchandise			Imports of Merchandise		
	1902	1912	Per cent in 1912	1902	1912	Per cent in 1912
Europe	$1,008,033,981	$1,341,732,789	60.8	$475,161,941	$ 819,585,326	49.5
North America	203,971,080	516,837,671	23.4	151,076.524	334,072,039	20.2
South America	38,043,617	132,310,451	6.0	119,785,756	215,089,316	13.0
Asia	63,944,077	117,461,561	5.3	129,682,651	225,468,250	13.3
Oceania	34,258,041	71,936,513	3.2	14,166,461	36,464,115	2.7
Africa	33,468,605	24,043,424	1.3	13,447,615	22,585,888	1.3
Total	$1,381,719,401	$2,204.322,409	100	$903,320,948	$1,653,264,934	100

Movement by Commodities.—A glance at the accompanying table of the leading commodities exported will indicate their nature and the notable changes which have occurred in this respect:

Exports	1902	1912
Cotton	$290,651,819	$565,849,271
Iron and steel goods	98,552,562	268,154,262
Meats and dairy products	199,861,378	156,260,876
Breadstuffs	213,392,061	123,979,715
Copper (not including ore)	41,218,373	113,958,919
Mineral oil	66,218,004	112,472,100
Lumber and wood mnfrs.	47,779,848	96,782,186
Leather and mnfrs.	29,798,323	60,756,772
Tobacco and mnfrs.	32,772,849	48,305,042
Cotton mnfrs.	32,108,362	50,769,511
Agricultural implements	16,286,740	35,640,005

Aside from raw cotton which has found an increasing foreign as well as home market, and leaf tobacco, the most pronounced movement has been from agricultural products to manufactures and semi-manufactures. There has been a great advance in the exports of manufactures, particularly of iron and steel, copper, lumber, mineral oil, cotton and agricultural implements. In 1880, but 12 per cent of the exports were manufactures; in 1900, 39.9 per cent; and in 1911, 45.19 per cent. The shift is in accordance with the increased heavy demand for agricultural products and the increased production of manufactures. It is this movement also which accounts for the growing efforts of manufacturers of all classes of goods to develop the newer and other agricultural countries markets for American commodities.

As shown in the table of the leading imports on the next page, the largest increases in the import trade have been in crude materials for manufacturing, and the foodstuffs; while the imports of manufacturers have relatively declined. These manufactures have, moreover, shifted largely from the crude and more general manufactures to the finer articles, in accordance with the rise of home industries which provide most of the ordinary manufactures.

Imports	1902	1912
Sugar, molasses and confectionery	$55,061,097	$115,515,079
Chemicals, drugs and dyes	7,774,183	92,029,625
India rubber and gutta percha	27,090,937	105,037,056
Coffee	70,982,155	117,826,543
Silk	42,635,351	69,541,672
Hides and skins (other than furs)	58,006,618	102,476,328
Cotton mnfrs.	44,460,126	65,152,785
Fibre mnfrs.	37,986,001	59,659,843
Fruits and nuts	12,497,896	45,377,269
Wood and mnfrs.	16,619,709	52,502,131
Diamonds and precious stones	24,133,874	————
Tin	19,461,850	46,214,198
Iron and steel and mnfrs.	28,261,053	26,676,056
Tobacco and mnfrs.	16,332,287	37,389,376
Copper (not including ore)	10,968,948	35,843,537
Silk mnfrs.	32,242,228	27,204,364
Crude fibers	31,545,962	34,462,866

Movement by Ports.—The leading changes in the position of the various ports of shipment and receipt has been the increase at the ports not on the Atlantic seaboard. New York City, alone, handles 37 per cent of the exports and 57 per cent of the total imports but the Gulf, Pacific and Lake outlets have become important factors. Galveston, Texas, has become the second greatest exporting port in the United States and New Orleans third, while Seattle, and San Francisco on the Pacific coast have increased in importance. The position of the Atlantic ports is far more dominant in the import than in the export trade; of the former they handle 76 per cent, as compared with 57 per cent in the latter.

Ports	Exports in 1912	Imports in 1912	Total
Baltimore	$ 92,210,877	$ 26,438,400	$118,649,277
Boston	69,692,171	129,293,016	198,985,187
Brunswick	19,889,838	76,618	19,966,456
Buffalo Creek, N. Y.	55,016,025	14,703,523	69,719,548
Charleston	12,423,035	5,024,674	17,447,709
Detroit	55,911,967	7,774,662	63,686,629
Galveston	218,146,097	4,309,758	222,455,855
Huron, Mich.	32,199,443	5,961,597	38,161,040
Mobile	31,230,117	4,643,907	35,874,024
New Orleans	149,160,910	75,089,887	224,250,797
Newport News	6,348,751	1,964,586	8,313,337
New York	817,945,803	975,744,320	1,793,690,123
Norfolk and Portsmouth	11,998,504	1,809,371	13,807,875
Pensacola	23,886,645	1,534,125	25,420,770
Philadelphia	69,069,730	85,038,185	154,107,915
Portland, Me.	7,114,350	1,686,205	8,800,555
Puget Sound	63,745,572	39,011,250	102,756,822
San Francisco	49,249,734	59,235,471	108,485,205
Savannah	104,286,925	5,129,979	109,416,904
Wilmington, N. C.	28,705,448	3,090,703	31,796,151

Trade with American Possessions.—In addition to the trade with foreign nations, the United States has developed a very considerable trade with her non-contiguous possessions. The aggregate shipments of domestic merchandise to these markets in 1912 were valued at $104,439,722 and the total receipts from them at $142,784,128. The leading commodities shipped from the United States to these markets are iron and steel goods, cotton goods, mineral oils, lumber, breadstuffs, meats and rice. The leading receipts are sugar, hemp, canned salmon, cigars and tobacco, coffee and fruits. The value of the imports from each of the non-contiguous territories is shown in the following table:

	1910	1911	1912
Alaska	$ 12,349,462	$ 13,813,824	$ 21,597,712
Hawaii	46,161,288	41,180,195	55,055,816
Porto Rico	32,095,788	34,764,007	42,873,401
Philippines	17,317,897	17,400,398	23,257,199
Guam	————	————	————
Tutuila	37,234	99,040	83,048
Total	$107,961,669	$107,257,464	$142,784,428

Movement of Internal Commerce.—Large though the foreign and other outside trade of the United States is, in most industries, it is on the whole, distinctly secondary to the domestic trade. The accompanying table shows the nature and quantities of freight carried on American railroads:

Class of Commodities	1900	1909	1911
Products of agriculture	53,468,496	73,683,720	85,566,053
Products of animals	14,844,837	20,593,352	23,763,262
Products of mines	271,602,072	459,560,732	539,255,980
Products of forest	59,956,421	97,104,700	108,506,272
Manufactures	69,257,145	108,677,129	135,175,536
Merchandise	21,974,201	33,975,628	36,519,321
Miscellaneous	25,432,217	32,897,504	38,447,567
Total	516,432,217	826,492,765[1]	967,233,991[1]

[1] Not including certain unassigned commodities.

In 1911, 967,233,991 tons of freight were carried excluding the freight received from connecting lines. This aggregate includes exported and imported articles handled by rail, for they are not separately specified. The total shipping entries in the foreign trade in 1912 amounted to 46,158,071 net tons, and that cleared to 46,416,912 net tons. This, however, includes all vessels in the international passenger traffic of the United States, and all traffic which originates and ends at the ports and does not move by rail.

The commodities carried by rail vary in different sections of the country. Everywhere, however, the mineral tonnage predominates. In the northern and eastern section, manufactures, merchandise and the export business are also of unusual importance; in the South, lumber and cotton; and in the West, agricultural products, livestock and lumber. The bulk of the rail traffic moves over long distances from the producer to the markets. On different lines from 15 per cent to 25 per cent of the traffic is within the state of origin; and all the remainder is inter-state.

Water-Borne Traffic.—Though complete statistics are not available, it is known that the traffic carried by coastwise and internal waterways also exceeds by far that of the entire foreign trade. The single item of coal shipped from the five leading Atlantic coast terminals by water to domestic markets aggregated 44,092,524 cargo tons in 1911. In addition,

lumber, railroad ties, wood pulp, cotton, mineral oil, building materials, fertilizers, laths and shingles and general merchandise constitute heavy items in the coastwise commerce of the Atlantic and Gulf seaboards. The coastwise interchange of merchandise between New York and New England ports in 1911 aggregated 2,020,977 short tons of freight each of shipments and receipts. The total number of coastwise ships arriving at Boston in 1911 was 10,240 with a gross tonnage of 11,905,887 tons. The coastwise commerce on the Pacific seaboard was somewhat larger in the calendar year 1911 than in the previous year. The coastwise arrivals at San Francisco, which may be taken as an index, increased from 4,261,929 net tons in 1910 to 4,696,149 in 1911, and the departures grew from 4,500,716 to 5,014,176 net tons. The heaviest inland river traffic, consisting chiefly of bulky low grade articles such as coal, gravel, sand, stone, lumber, logs and farm produce, is on the Ohio, Monongahela, Delaware, Hudson, Allegheny, Mississippi, Columbia, and Sacramento and San Joaquin rivers. On all of these with the exception of the Mississippi River, the commerce has increased in recent years; but as compared with the more distant past, there are many streams which formerly carried extensive traffic but have since declined in importance.

Aside from the canals connecting the Great Lakes, there is but one inland canal with a growing traffic—the Chesapeake and Delaware. Its traffic in 1911 aggregated 914,175 tons. The Erie Canal handled 2,031,735 tons in 1910, and the Champlain, 770,668 tons; the Delaware and Raritan carried 448,964 tons in 1910 and the Lehigh and Delaware Division about 400,000 tons.

Mention must finally be made of the commerce of the Great Lakes. In the calendar year 1911, 74,311,019 tons of freight were shipped from the American ports of these lakes, and 72,320,000 tons were received. Their commerce has, in recent years, exceeded that of any other inland body of water in the world and it has gradually increased. The eastward movement is heaviest, for it is in this direction that nearly 48,000,000 tons of iron ore and minerals are moved, and most of the lumber, grain, flaxseed and flour. The westward movement consists chiefly of coal and general merchandise. Most of the traffic, moreover, is through rather than local and passes between not more than a dozen of the largest lake ports.

See Coasting Trade; Express Service, Regulation of; Immigration; Interstate Commerce Legislation; Lakes, Jurisdiction and Navigation of; Navigation, Regulation of; Postal System of the United States; Registry of Shipping; Shipping, Regulation of; Steamboat Inspection; Tariff Administration; Transportation, Economic Principles of; Transportation, Regulation of.

References: U. S. Bureau of Statistics, *Monthly Summary of Commerce and Finance* Dec., 1910–June, 1911; U. S. Bureau of Statistics, *Commerce and Navigation of the U. S.* (annual); U. S. Interstate Commerce Commission, *Statistics of Railways* (annual); U. S. Bureau of Corporations, *Transportation by Water in the United States* (1909-1910); U. S. Bureau of the Census, "Transportation by Water in 1906" in *Bulletin*, No. 91 (1908); E. R. Johnson and G. G. Huebner, *Railroad Traffic and Rates* (1911), I, chs. i, ii; Committee on Traffic of Atlantic Deeper Waterways Association (Philadelphia), *Report on Proposed Intracostal Canal Connecting New York and Delaware Bays* (1911).

Grover G. Huebner.

COMMERCE AND LABOR, DEPARTMENT OF. An executive department of the Federal Government, established in 1903 "to foster, develope, and promote foreign and domestic commerce; the mining, manufacturing, and shipping interests; the labor interests; and the transportation facilities of the United States." By an act approved March 4, 1913, the three bureaus of this Department charged with the supervision of labor interests were formed into a new Department of Labor (*see*), and the remaining bureaus are comprised in the present Department of Commerce (*see*). At the time of its division the Department of Commerce and Labor was made up of the Bureaus of Corporations, Foreign and Domestic Commerce, Lighthouses, the Census, Fisheries, Navigation, Standards, Labor, Immigration and Naturalization, and the Children's Bureau (the last three being those transferred to the present Department of Labor), the Coast and Geodetic Survey, and the Steamboat Inspection Service. At the head of the Department was the Secretary of Commerce and Labor, ranking last among the members of the President's Cabinet. See Coast and Geodetic Survey; Commerce, Department of; Labor, Department of; Lighthouse System; Steamboat Inspection; bureaus by name. References: Secretary of Commerce and Labor, *Annual Reports* (1903–1912); M. L. Hinsdale, *Hist. of the President's Cabinet* (1911); H. B. Learned, *President's Cabinet* (1911); C. H. Van Tyne and W. G. Leland, *Guide to the Archives of the U. S.* (2d ed., 1907). C. M.

COMMERCE AND LABOR, SECRETARIES OF. Following is a list of the Secretaries of Commerce and Labor from the establishment of the department in 1903 to its division into the two Departments of Commerce and of Labor in 1913:

1903 (Feb. 16)—1904 (July 1), George B. Cortelyou.
1904 (July 1)—1905 (Mar. 6), Victor H. Metcalf.
1905 (Mar. 6) 1906 (Dec. 12), Victor H. Metcalf (re-commissioned.
1906 (Dec. 12)—1909 (Mar. 5) Oscar S. Straus.
1909 (Mar. 5)—1913 (Mar. 4) Charles Nagel.

COMMERCE, CHAMBERS OF. (Boards of Trade, Business Men's Associations, etc. Not to be confused with exchanges. A voluntary association, sometimes incorporated, of the citizens of a community—usually business and professional men—the purpose of which is to promote the industrial, civic and other welfare of the community. Chambers of commerce may be divided into three classes: (1) those concerned with the development of foreign trade, the case with some European chambers; (2) those concerned primarily with the industrial development of the communities they respectively represent; (3) those concerned with civic improvements, as well as with industrial development, the case with most American chambers.

The New York Chamber of Commerce was the first to be established in the United States (1768). During the next hundred years similar chambers were organized in other of the larger cities. The decade 1900–1910 witnessed a remarkable development of these institutions along two lines: (1) the increase in size, efficiency of organization and scope of activity of chambers in certain large cities (notably Cleveland and Boston); (2) the organization of boards of trade in innumerable small cities and villages throughout the United States.

The following are some of the activities of a chamber of commerce: the collection and publication of trade statistics; the attraction of new businesses to the community; the attraction of conventions; securing better transportation, banking, insurance and similar industrial facilities; establishing commercial and trade schools; settling by arbitration mercantile disagreements; arousing public opinion concerning civil improvement—streets, parks, play-grounds, museums, etc. See BUSINESS, GOVERNMENT RESTRICTION OF; CANALS AND OTHER ARTIFICIAL WATERWAYS; DOCKS AND WHARVES; EXCHANGES, BUSINESS; HARBOR SYSTEM; RAILROAD ESTABLISHMENT AND MANAGEMENT; SUBSIDIES TO SHIPPING; STATISTICS, OFFICIAL COLLECTION OF; TRANSIT IN CITIES, PROBLEMS OF; TRANSPORTATION, REGULATION OF. **References:** Chambers of Commerce, *Annual Reports* and *Year Books;* F. C. Huber, *Die Handelskammern: Ihre Entwickelung u. künftigen Aufgaben* 1906.

H. S. PERSON.

COMMERCE CLAUSE. The Constitution of the United States gives Congress power "to regulate commerce with the foreign nations, and among the several states, and with the Indian tribes" (Art. I., Sec. viii, ¶ 3). See COMMERCE, GOVERNMENTAL CONTROL OF; INTERSTATE COMMERCE AND CASES; INTERSTATE COMMERCE COMMISSION; INTERSTATE COMMERCE DECISIONS; INTERSTATE COMMERCE LEGISLATION. **Reference:** F. H. Cooke, *Commerce Clause of the Federal Constitution* (1908).

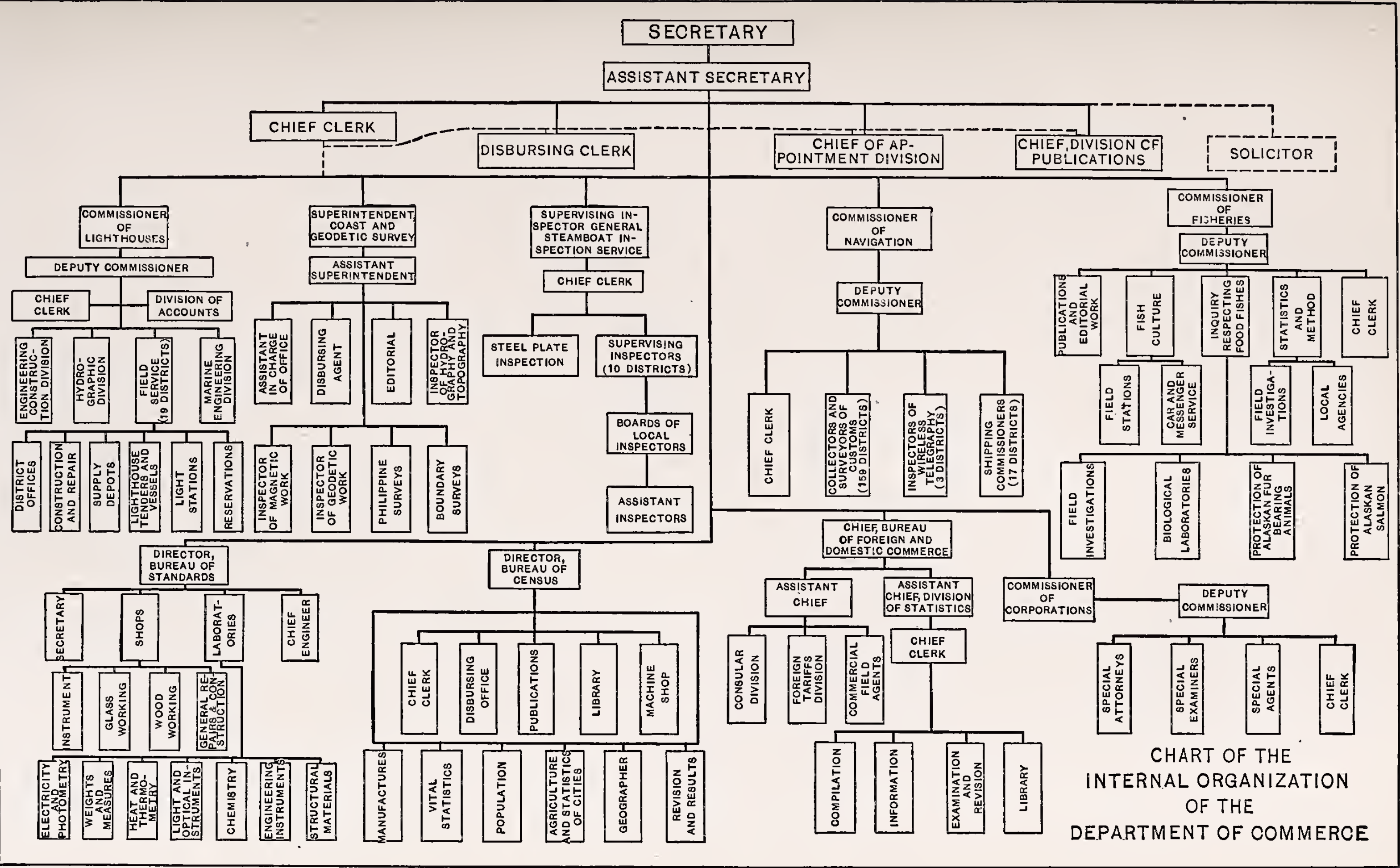
A. C. McL.

COMMERCE COURT. See COURT, COMMERCE.

COMMERCE, DEPARTMENT OF. Organization.—The Department of Commerce is the larger of the two sections into which the Department of Commerce and Labor (*see*) was divided by the act of March 4, 1913, which established a Department of Labor (*see*) and transferred thereto the three bureaus of the original department charged with the supervision of labor interests. Its purpose is to foster, develop and promote foreign and domestic commerce, the mining, manufacturing and shipping interests, and the transportation facilities of the United States. At its head is a Secretary, who ranks ninth among the members of the President's Cabinet; and an assistant secretary, who, in the absence of the Secretary, acts as the head of the department, and who performs such duties as may be prescribed by law or by the Secretary. The chief clerk is charged with the expenditure of appropriations, answering calls from Congress or elsewhere for copies of papers and records, the general supervision of the clerks and employees in the District of Columbia, and the discharge of unassigned business. The disbursing clerk has charge of requisitions for advances of public funds for the department, the examination of the accounts of disbursing officers and agents, the payment of all vouchers except those of the Census and the Coast and Geodetic Surveys, and of transportation allowances. The chiefs of the divisions of appointments, of publications, and of supplies perform the duties indicated by their titles. The department is made up of seven distinct bureaus, one inspection service and one survey.

Bureau of Corporatiosn.—The Commissioner of Corporations investigates the organization, conduct and management of the business of any corporation, joint-stock company or corporate combination engaged in interstate or foreign commerce, except common carriers subject to the interstate commerce (*see*) act; he gathers data to enable the President to recommend to Congress legislation to regulate commerce; and, under the direction of the Secretary, obtains and publishes information in regard to corporations engaged in commerce or insurance. This bureau obtains the information on which prosecutions of corporations violating the Sherman Anti-Trust Act (*see*) are based. (*See* CORPORATIONS, BUREAU OF.)

Bureau of Foreign and Domestic Commerce.—The Bureau of Manufactures and the Bureau of Statistics were combined in 1912, to form the Bureau of Foreign and Domestic Commerce (*see*), the duty of which is to foster, promote and develop the various manufacturing interests of the United States and markets therefor at home and abroad. The chief of the bureau gathers and publishes, daily, information concerning home and foreign markets and


SECRETARY
ASSISTANT SECRETARY
CHIEF CLERK
DISBURSING CLERK
CHIEF OF APPOINTMENT DIVISION
CHIEF, DIVISION OF PUBLICATIONS
SOLICITOR
COMMISSIONER OF LIGHTHOUSES
DEPUTY COMMISSIONER
CHIEF CLERK
DIVISION OF ACCOUNTS
ENGINEERING CONSTRUCTION DIVISION
HYDROGRAPHIC DIVISION
FIELD SERVICE (19 DISTRICTS)
MARINE ENGINEERING DIVISION
DISTRICT OFFICES
CONSTRUCTION AND REPAIR
SUPPLY DEPOTS
LIGHTHOUSE TENDERS AND VESSELS
LIGHT STATIONS
RESERVATIONS
SUPERINTENDENT COAST AND GEODETIC SURVEY
ASSISTANT SUPERINTENDENT
ASSISTANT IN CHARGE OF OFFICE
DISBURSING AGENT
EDITORIAL
INSPECTOR OF HYDROGRAPHY AND TOPOGRAPHY
INSPECTOR OF MAGNETIC WORK
INSPECTOR OF GEODETIC WORK
PHILIPPINE SURVEYS
BOUNDARY SURVEYS
SUPERVISING INSPECTOR GENERAL STEAMBOAT INSPECTION SERVICE
CHIEF CLERK
STEEL PLATE INSPECTION
SUPERVISING INSPECTORS (10 DISTRICTS)
BOARDS OF LOCAL INSPECTORS
ASSISTANT INSPECTORS
COMMISSIONER OF NAVIGATION
DEPUTY COMMISSIONER
CHIEF CLERK
COLLECTORS AND SURVEYORS OF CUSTOMS (159 DISTRICTS)
INSPECTORS OF WIRELESS TELEGRAPHY (3 DISTRICTS)
SHIPPING COMMISSIONERS (17 DISTRICTS)
COMMISSIONER OF FISHERIES
DEPUTY COMMISSIONER
PUBLICATIONS AND EDITORIAL WORK
FISH CULTURE
INQUIRY RESPECTING FOOD FISHES
STATISTICS AND METHOD
CHIEF CLERK
FIELD STATIONS
CAR AND MESSENGER SERVICE
FIELD INVESTIGATIONS
LOCAL AGENCIES
FIELD INVESTIGATIONS
BIOLOGICAL LABORATORIES
PROTECTION OF ALASKAN FUR BEARING ANIMALS
PROTECTION OF ALASKAN SALMON
DIRECTOR, BUREAU OF STANDARDS
SECRETARY
SHOPS
LABORATORIES
CHIEF ENGINEER
INSTRUMENT
GLASS WORKING
WOOD WORKING
GENERAL REPAIRS & CONSTRUCTION
ELECTRICITY AND PHOTOMETRY
WEIGHTS AND MEASURES
HEAT AND THERMOMETRY
LIGHT AND OPTICAL INSTRUMENTS
CHEMISTRY
ENGINEERING INSTRUMENTS
STRUCTURAL MATERIALS
DIRECTOR, BUREAU OF CENSUS
CHIEF CLERK
DISBURSING OFFICE
PUBLICATIONS
LIBRARY
MACHINE SHOP
MANUFACTURES
VITAL STATISTICS
POPULATION
AGRICULTURE AND STATISTICS OF CITIES
GEOGRAPHER
REVISION AND RESULTS
CHIEF, BUREAU OF FOREIGN AND DOMESTIC COMMERCE
ASSISTANT CHIEF
ASSISTANT CHIEF, DIVISION OF STATISTICS
CHIEF CLERK
CONSULAR DIVISION
FOREIGN TARIFFS DIVISION
COMMERCIAL FIELD AGENTS
COMPILATION
INFORMATION
EXAMINATION AND REVISION
LIBRARY
COMMISSIONER OF CORPORATIONS
DEPUTY COMMISSIONER
SPECIAL ATTORNEYS
SPECIAL EXAMINERS
SPECIAL AGENTS
CHIEF CLERK
CHART OF THE
INTERNAL ORGANIZATION
OF THE
DEPARTMENT OF COMMERCE

industries, obtained through the Secretary of State from consular officers (*see* CONSULAR REPORTS). He also supervises reports from the commercial agents of the department, compiles the annual reports of consuls for the yearly publication, *The Commercial Relations of the United States;* and from time to time puts out consular reports on special subjects. He also publishes statistics of imports and exports, and of commercial movements between various sections of this country (*see* STATISTICS, OFFICIAL COLLECTION OF).

Bureau of Lighthouses.—The Commissioner of Lighthouses has under his supervision the establishment and maintenance of lighthouses, lightships, buoys and other aids to navigation on the coasts, lakes and rivers, as established by Congress. Formerly this bureau was administered by a board composed mainly of naval and army officers, with an admiral as chairman and a naval and an engineer secretary. From time to time it publishes bulletins to promote the safety of navigation (*see* LIGHTHOUSE SYSTEM.)

Bureau of the Census.—The Director of the Census (*see*) is charged with taking the decennial census, making certain statistical investigations at stated intervals, and collecting special statistics authorized by law. The rapid increase in the number of subjects (including taxation, banking, street railways, electric lighting, telephones and telegraphs, social and vital (*see*) statistics and statistics of defective classes) has caused the bureau to be made permanent (*see* STATISTICS).

Coast and Geodetic Survey.—The Superintendent of the Coast and Geodetic Survey is charged with the preparation of charts of the coasts of the United States and dependencies, the survey of navigable waters (excepting the Great Lakes), deep-sea soundings, magnetic observations and researches, temperature and current investigations, the marking of international boundaries, and many like functions. The Survey publishes charts, coast pilots, tide tables, notices to mariners, and annual and special reports of both general and technical interest (*see* COAST AND GEODETIC SURVEY).

Steamboat Inspection Service.—The Supervising Inspector General of the Steamboat Inspection Service, through local boards of supervising inspectors, makes annual inspections of steam vessels, issues licenses to their officers and enforces laws for the protection of life and property (*see* STEAMBOAT INSPECTION).

Bureau of Fisheries.—The Commissioner of Fisheries (*see* FISHERIES, BUREAU OF) supervises the propagation of food-fish in the waters of the United States, investigates subjects in relation to fish-life, and has charge of the fur-seal and salmon fisheries of Alaska. Hatcheries are established at various points throughout the country.

Bureau of Navigation.—The Commissioner of Navigation has general oversight of the commercial marine and merchant seamen; he decides questions as to enrollments, registers and vessel licenses, and as to tonnage (*see*) taxes; he reports annually to the Secretary in respect to changes in navigation laws; and he enforces, through customs officers, navigation (*see*) and steamboat inspection (*see*) laws. He publishes, annually, a *Register of Merchant Vessels of the United States* (*see* NAVIGATION, BUREAU OF.)

Bureau of Standards.—The Director of the Bureau of Standards (*see* STANDARDS, BUREAU OF) has the custody of standards of weights and measures (*see* WEIGHTS AND MEASURES); he compares standards used in manufacturing, in commerce and in educational institutions with government standards. The bureau receives fees for work excepting that done for the national government or for states. The range and scientific accuracy of its standardization work make the bureau of large and increasing value.

See CABINET OF THE PRESIDENT; COAST AND GEODETIC SURVEY; COMMERCE AND LABOR, DEPARTMENT OF; STEAMBOAT INSPECTION SERVICE; bureaus by name.

References: Secretary of Commerce, *Annual Reports;* Secretary of Commerce and Labor, *Annual Reports* (1903–1912); M. L. Hinsdale, *Hist. of the President's Cabinet* (1911); H. B. Learned, *The President's Cabinet* (1911); C. H. Van Tyne and W. G. Leland, *Guide to the Archives of U. S.* (2d ed., 1907), 231–241.

CHARLES MOORE.

COMMERCE, GOVERNMENTAL CONTROL OF

Exercise of Police Power.—The protection and promotion of commerce constitute legitimate and important functions of government in a civilized state, and the power on the one hand to facilitate commerce by providing public conveniences and on the other hand to regulate the use of property devoted to such purposes form a large and important portion of the general police power exercised by organized government, and, under our constitutional system, included within the legislative power. (*see* POLICE POWER). In facilitating commerce public money has been legitimately expended in improving ports, harbors (*see* HARBOR SYSTEMS), channels, and streams, and in the construction of canals (*see*); and the navi-

gation (*see*) of all waters available for such use has been regulated; highways (*see* ROADS; STREETS) for travel and transportation have been provided; railroads, telegraph, and telephone lines, and other facilities for travel, transportation, and communication, have been constructed at the public expense, or authorized to be constructed by corporations, to which have been delegated authority to use the public highways or acquire private property for their use under the exercise of the power of eminent domain (*see*); the postal service (*see* POSTAL SYSTEM) has been instituted; and, in general, protection in the enjoyment of these facilities has been afforded. In securing to the people fair and equal opportunities in the reasonable use of the facilities thus provided and in the enjoyment of the privileges thus afforded as well as in the use of property devoted by private owners to such purposes for gain, rates have been regulated and restrictions have been imposed. And finally, without attempting to make the enumeration complete or exclusive, the restrictive power has been properly exercised in many directions in the control of the natural right to buy, sell and exchange property and to engage in commercial business, subject to constitutional limitations on the taking of private property for public use and the protection of liberty and property against invasion without due process of law.

The most important questions, however, relating to the regulation of commerce have been those arising out of the delegation to Congress in the Federal Constitution of the power "to regulate commerce with foreign nations, and among the several states and with the Indian tribes" (Art. I, sec. viii, ¶ 3); and these concern not only the resulting limitations on the power which would otherwise have been possessed by the states, but also the extent of the implied delegation to Congress of authority to legislate as to subjects of foreign and interstate commerce.

What is Commerce?—Difficulties in defining the term "commerce" have arisen in determining the extent of the federal power and limitations on state power resulting from the insertion of the commerce clause in the Federal Constitution. The history of the clause throws but little light upon its meaning. It was adopted without opposition and with slight debate. While commercial difficulties arising under the government provided for by the Articles of Confederation (*see*) furnished one of the strongest inducements for the organization of a stronger central government, they related principally to intercourse with foreign nations and commercial jealousies between states of the Confederation. It was soon determined, however, that the commerce clause had a broader scope than would be implied in the ordinary definition of commerce as an interchange of goods or property, and that it covered navigation, the sale and exchange of goods, the passage of persons from one place to another in the broad sense of travel, and the transmission of intelligence by way of communication and in commercial intercourse. The power of regulation embraces all the instrumentalities and agencies by which commerce may be conducted and extends to all the subjects of commerce.

Federal Regulation of Commerce.—A large measure of power affecting foreign commerce is given to Congress under the authority conferred upon it "to lay and collect taxes, duties, imposts, and excises" with the limitation that "all duties, imposts, and excises shall be uniform throughout the United States" (Art. I, Sec. viii, ¶ 1), and with the further limitation that "No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another," etc. (Art. I, Sec. ix, ¶¶ 5, 6). The restrictive clauses prevent interference by Congress with freedom of commerce among the states and discrimination between the states (*see* TAXATION OF EXPORTS). The general power to levy duties and imposts does not authorize duties on commerce between the states and the territorial possessions of the United States (*see* TERRITORY, CONSTITUTIONAL QUESTIONS OF). Under the commerce clause Congress has exercised full control over navigation (*see* NAVIGABLE WATERS) and has legislated for the preservation of the navigability of rivers and lakes; but this power does not extend to the regulation of the use of the waters of a stream for irrigation purposes although it flows through two or more states, if the navigability of the stream is not affected.

The commerce clause also authorizes Congress to charter corporations for carrying on interstate and foreign commerce and to exercise powers of regulation in regard to state corporations engaged in interstate commerce. Such power has been exercised by the passage of statutes prohibiting discriminations and creating a commission for the fixing of interstate rates (*see* INTERSTATE COMMERCE COMMISSION; INTERSTATE COMMERCE LEGISLATION; PRICES AND CHARGES, REGULATION OF). Under the same delegation of power, Congress has prohibited combinations and trusts affecting interstate commerce (*see* SHERMAN ANTI-TRUST ACT; TRUSTS). Federal control of the agencies of commerce has in recent years been very much extended by statutes intended to promote the safety of persons and property in transit and protect the employees of railroad companies engaged in interstate commerce (*see* INTERSTATE COMMERCE AND CASES); and it has been held that Congress may exercise with reference to interstate commerce a general police power such as that involved in the prohibition of the transportation of lottery tickets, in analogy with the like power exercised in the exclusion of objectionable matter from the

mails. Even without specific legislation, the Federal Government has the authority under the commerce clause to prevent unlawful interference with interstate commerce, as it has like authority with reference to the transmission of the mails.

Commerce with Indian Tribes.—The power given to Congress to regulate commerce with the Indian tribes is peculiarly a police power calculated to preserve proper relations between such tribes and the members thereof and the persons who may come in contact with them. It extends to intercourse of every character without reference to locality and has been exercised for the purpose of restricting trade with the view to protection of the Indians (*see* INDIAN POLICY).

Restrictions on State Regulation and Taxation.—Aside from the restrictions on state power involved in the commerce clause there are other limitations affecting the regulation and taxation of commerce by the states such as that "no state shall without the consent of Congress lay any imposts or duties on imports or exports," etc. (Art. I, Sec. x, ¶ 2) and that no state shall without the consent of Congress lay any duty of tonnage (Art. I, Sec. x, ¶ 3). While these limitations relate specifically to the state taxing-power, they are limitations on regulation of commerce as well.

See INTERSTATE COMMERCE AND CASES; INTERSTATE COMMERCE LEGISLATION; LABOR, RELATION OF THE STATE TO; NAVIGATION, REGULATION OF; PUBLIC SERVICE COMMISSIONS; RAILROADS, PUBLIC AID TO; RAILROADS, PUBLIC OWNERSHIP OF; RAILROADS, REGULATION OF; TRANSPORTATION; SHIPPING, REGULATION OF; SUBSIDIES TO SHIPPING; WATERWAYS.

References: M. Farrand, *The Records of the Federal Convention* (1911), I, 133, 142, 243; II, 167, 181, 583, 595, 635, 666; *The Federalist*, Nos. 7, 11, 12, 22, 42; J. Story, *Commentaries on the Constitution of the U. S.* (5th ed., 1891), ch. xv; T. M. Cooley, *Constitutional Limitations* (7th ed. 1903), chs. xiv, xvi; W. W. Willoughby, *Constitutional Law of the United States* (1910), chs. xlii, xliii; J. Fiske, *Critical Period of American History* (1888), ch. iv; E. P. Prentice and J. G. Egan, *The Commerce Clause of the Federal Constitution* (1898); F. N. Judson, *Law of Interstate Commerce and Its Federal Regulation* (1905); F. H. Cooke, *Commerce Clause of the Federal Constitution* (1908); C. A. Beard, *Readings in Am. Government and Politics* (1911), ch. xix; F. J. Goodnow, *Social Reform and the Constitution* (1911), ch. ii. For the leading cases relating to interstate and foreign commerce, see references in the article on INTERSTATE COMMERCE AND CASES.

EMLIN MCCLAIN.

COMMERCE, INTERNATIONAL. International commerce owes its present status principally to the existing system of commercial treaties which during its development have been subject to changes due to varying economic theories embodied in the commercial policies of states.

Basis.—Although states of the ancient world permitted foreign commerce, treaties regulating it were infrequent (that between Rome and Carthage, 508 B. C., was perhaps the first) and were based upon no well-defined theory. During the middle ages the foreigner was rarely tolerated, and then only under stringent regulations as to residence and activities. The earliest European commercial treaties were directed toward securing safety for the persons and property of merchants engaged in foreign trade.

Grotius attempted to derive a right to trade from the law of nature, but his ideas were combatted by his successors, especially by Pufendorf. Traces of them, however, appear in modern works (*e. g.*, Klüber, Massé and Calvo) in developing the notion of "natural liberty of commerce," by which is meant the alleged right which subjects of a state have to engage in commerce, with the correlative obligation upon other states not to trouble such commerce so long as sovereign or treaty rights are not interfered with.

The practice of nations cannot be said to agree with this doctrine. From a very early time treaty arrangements interdicted trade in specified articles and with particular peoples. From these grew the modern doctrine of contraband of war (*see* CONTRABAND). Historically, international commerce acquired a legal position by slow stages, in the granting of passports to foreign merchants, and of the right to trade at markets and fairs, and by the concession of monopolies by states and cities.

The commercial treaties of the late 17th and 18th centuries were largely shaped by the current theories of foreign trade held by the mercantilists, who esteemed foreign commerce because it produced a favorable balance of trade. Commercial treaties were, therefore, drawn so as to produce the greatest possible favorable balance. The motive was the acquisition of concessions, in which respect a resemblance is to be noticed in many modern commercial arrangements between western and eastern nations. During the 18th century treaties began to be framed upon the basis of reciprocity. This took the form of favored nation, or of equal, treatment.

Early Treaties of the United States.—The first commercial treaty negotiated by the United States was with France, 1778. It embodied the more liberal practice of the time and in general followed the form drafted by the committee of the Continental Congress in 1776. In it is the most favored nation clause in the form since preferred by the United States; discriminating duties are forbidden, exemption from *droit d'aubaine* assured, and asylum promised to vessels in distress, leaving to each

party the making of regulations for commerce and navigation. Later commercial treaties of the United States expressly stipulate for reciprocal freedom of commerce and navigation, the more exact nature of which is then specifically defined. By it is usually meant the right to enter into all rivers, ports, and places (and there to reside and engage in commerce) where foreign trade is allowed. In many treaties this general provision is supplemented by detailed stipulations for the protection of the nationals of one state in the country of the other, including the right to own, rent, and occupy dwellings, offices, and factories, of paying no higher or other taxes than paid by nationals, of managing their own affairs with no liability to embargo, detention, or sequestration of property. Greatest detail is seen in the treaties with the South American States.

Usual Clauses.—Participation by foreigners in coast navigation and fisheries is usually denied in commercial treaties. While the right of each state to frame and administer its own system of taxation, including the collection of import duties, is recognized, commercial treaties frequently provide that the administration of customs and police shall not work discrimination in favor of one state as against another. Earlier treaties provided that the nationals of one state should pay no higher duties than were paid by those of any other, or the most-favored, nation. Later agreements place the nationals of both contracting powers upon the same basis as to payment of import duties and port-charges, and in the observance of quarantine regulations. Likewise in border intercourse, the resident foreigner is held to the same standard of duty (*e. g.*, in reference to smuggling) as is the national.

Mutual Advantage.—Aside from the divergent policies reflected in the various forms of most favored nation clauses modern commercial treaties usually proceed upon the theory that most is to be gained by reciprocal arrangements by which, in that part of commerce in which the foreigner is permitted to engage, he is put upon the same footing as the national, and given the same security and equality of treatment in law.

As the mercantile law is a law common to all nations, and as the status of the resident alien engaged in commerce has become recognized in international law and in municipal legislation, international commerce has obtained a stability based upon law quite necessary for the exercise of its complicated and delicate mechanism.

See Comity, International and Interstate; International Conferences and Congresses; International Law, Influence of the United States on; International Law, Principles of; Most Favored Naticn Clause; Neutral Trade; Ports, Jurisdiction in; Trade Follows the Flag.

References: C. F. Bastable, *Theory of Int. Trade* (4th ed., 1903); Clive Day, *Hist. of Commerce* (1907); G. M. Fisk, *Int. Commercial Policies* (1907); G. Massé, *Droit Commercial dans ses Rapports avec le Droit des Gens* (3d. ed., 1874); E. Nys, *Origines du Droit Int.* (1894), 278–295, *Droit Int.* (1905), I, 221–229; G. L. Klüber, *Droit des Gens Moderne* (1819, French ed. 1861), 88–113.

J. S. Reeves.

COMMERCE, SECRETARY OF. The first Secretary of Commerce, appointed March 5, 1913, was William C. Redfield.

COMMERCIAL FAILURES. See Bankruptcy and Commercial Failures.

COMMERCIAL HIGH SCHOOL. See Schools, High, Commercial.

COMMERCIAL POLICY AND RELATIONS OF THE UNITED STATES

Revolutionary Period.—In no later period has the United States been so dependent on foreign commerce as at the time when the colonies declared their political independence, in 1776. They were still in the stage of colonial economy, relying on the Old World as a market for the products of their extractive industries, and as a source of supply of the manufactures and the luxuries which they could afford to consume. The rupture with the mother country destroyed at once the most important part of their commerce, but left them still outside the protective barriers by which the states of continental Europe shielded commerce with themselves and with their dependencies. One of the most serious and pressing problems before the new American Government was the formulation of a policy which would establish new commercial ties to replace the old ones fixed by the British colonial system.

Faced everywhere by commercial restriction, American statesmen were forced by the logic of the situation, to urge the advantages of free commercial intercourse. The ports were declared open to the merchants of all friendly nations; to secure the admission of wares and ships in foreign countries, the favorable action of other governments was necessary, and the early commercial policy of the United States resolves itself into negotiations by which this end could be attained.

The Federal Government turned first to France, England's old rival and our natural ally, and by the treaty of 1778 established commerce with that country on the basis of the "most favored nation" principle, in the American sense of the term (*see* MOST FAVORED NATION). The American commissioners would gladly have gone further, by providing that the citizens or subjects of the treaty powers should enjoy the rights not merely of the most favored foreigner, but even of natives, in commercial dealings; but European statesmen were not prepared for such a departure from traditional policy.

In fact this treaty and others substantially similar concluded with Holland (1782), Sweden (1783), and Prussia (1785), conceded far less than the modern reader might suppose; for, with unimportant exceptions, they left still in force the high import duties and prohibitions that marked the European tariffs of the time, as well as many features of the old colonial system. They were designed to legalize commerce rather than to encourage it. Spain long declined to go even so far as this, and not till 1795 recognized by treaty the existence of commerce with the United States and regulated some details; while she still refused any favors that would have implied a breach in her prohibitive system.

Early Federal Government.—Particular interest, naturally, attaches to the conditions under which commerce was resumed between the United States and the United Kingdom after the conclusion of the war of independence. British statesmen had to face the question whether they would strive to regain the commerce with America which they had formerly valued so highly; or whether they would forego the economic advantages of exchange by upholding the principles of the old policy and treating the United States like any other foreign state. The teachings of Adam Smith inspired a bill which Pitt introduced in Parliament in 1783, opening to the United States "on the most enlarged principles of reciprocal benefit," the ports not only of the mother country but also of her remaining American colonies. Such a departure from the traditional English policy was too sweeping to be acceptable, and the bill failed to pass. For the time being commerce with the United States was regulated by the Crown through "Orders in Council" and was subjected to a variety of restrictions.

Summarizing the results of this first period of American commercial policy, from Jefferson's report of 1793, we find that in spite of negotiations and treaties the staple exports of the United States (tobacco, rice, fish, salt provisions, bread stuffs) were subject to heavy duties, or were actually prohibited in various European states; while trade with the West Indies, which was one of the chief branches of our commerce, was entirely forbidden by Spain, and was maimed by the partial prohibitions or heavy duties imposed by France and England. An effort to secure better terms for our commerce with England, and particularly with the British West Indies, led to Jay's mission and the treaty of 1794; but the English proposals regarding colonial trade were entirely unacceptable, and the ratification of the treaty made no practical difference in the commercial conditions previously existing between the two countries.

Effects of the European Wars.—The unfavorable, even humiliating position, in which American commerce was placed at this period of national beginnings, was destined to endure for only a short time. Relief came almost unasked, and from an unexpected source. The outbreak of the European wars which attended the French Revolution forced European statesmen to open their markets to the foodstuffs which the United States could provide; and further, threw into the hands of American merchant captains a considerable part of the carrying trade of the world. As one after another of the European countries was drawn into war, the United States became the sole neutral power with a large merchant marine; and in this capacity was welcomed not only in the European but even in the colonial markets, which formerly had been so jealously withheld. American exports increased in value fivefold; American shipping increased nearly tenfold.

American commerce and shipping were growing up, it is true, on a precarious basis. The rights of neutrals were not determined or not respected. American ship captains and merchants were subject to the arbitrary interference of the belligerents, and as the conflict grew more bitter they suffered more and more severely. The American Government did not feel prepared to maintain by force the rights of its subjects, and recorded its protest in an act (1806) which prohibited the importation of English manufactures, and a general embargo (1807–1809), which retained all vessels in port. These measures were ineffective, and finally, in 1812, the government declared war against England (*see* WARS OF THE UNITED STATES).

Development after 1815.—Of the total commerce of the United States more than half flowed to and from England, and especial importance, therefore, attaches to the treaty (July 3, 1815) which confirmed commercial relations between the two powers after the war. This treaty settled some, though by no means all, of the questions which had been in dispute. Commerce between the United States and the British territory in Europe was established on the "most favored nation" principle; American wares were assured the same treatment as the similar wares of any other country, and were treated alike whether they were imported in English or in American ships, (the definition of an "American ship" with refer-

ence to the nationality of the crew, remaining still in dispute). The treaty did not abrogate, however, some of the important provisions of the old navigation laws; it applied only to the direct trade, *i. e.*, it did not permit Americans to export to the United Kingdom in their own ships any wares except those produced in their own country; and while it admitted American merchants to the chief ports of the East Indies it reserved the commerce with other dependencies, particularly with the West Indies.

These provisions were disappointing, but it should be noted that the general conditions of the period were changing to the advantage of the United States, and that the representatives of American commercial interests were in a position to negotiate henceforth with more freedom and firmness. The spread of the cotton culture gave the country an export which was indispensable to the industries of the Old World. The rise of manufactures in the United States, stimulated by the interruptions to commerce in the period closing in 1815, and by the protective tariffs elaborated in the period beginning at that date, freed the country from such complete dependence on European imports as had marked the colonial economy. The merchant marine of the United States was second only to that of the United Kingdom.

Discrimination and Reciprocity in Navigation.—The first Congress imposed discriminating tonnage duties on the vessels of foreign countries and goods imported in such vessels. Such measures were not needed, and they provoked retaliation on the part of European governments. March 3, 1815, therefore, Congress directed the President to suspend the discrimination on the vessels and cargoes of a foreign country engaged in direct trade with the United States, when he was satisfied that any discriminating tonnage dues of that country, operating to our disadvantage, had been repealed. An act of January 14, 1817, provided that vessels coming from countries which absolutely closed their ports to the United States must pay a fourfold tonnage duty. This was repealed in 1824 when several European countries had already made terms with the United States. An act of May 24, 1828, generously enlarged the offer of reciprocity, by providing for the admission of ships of any state, from anywhere, laden with any wares, subject to no other dues than would fall upon an American ship in a like case, when the state in question granted similar privileges. This policy was especially significant for the new Latin-American countries. The treaty with the Confederation of Central America December 5, 1825, providing for reciprocity in navigation both in the direct and indirect trade, was followed by similar treaties with other American states (Brazil, Ecuador, Venezuela).

Since 1815 the Government had sought persistently by negotiation or by retaliatory legislation (acts of April 15, 1818, May 15, 1820, March 1, 1823), to secure such a standing in the West Indian trade as was granted to the British North American colonies. The English Government for a time stood firm in its refusal to depart from the cherished principles of the old colonial system, and a considerable part of the trade in the West Indies was carried on by smuggling. An act of Parliament of 1825 offered reciprocity, but the United States did not accept the terms within the time limit of one year, and an Order in Council of 1826 closed to American ships the British American ports except those of Canada and Nova Scotia.

Jackson rescued the West Indies trade from this deadlock, but only by sacrificing some of the most important principles for which the United States had been contending. While American ships could now (1830) export the products of the United States to the West Indies without discrimination, the wares bore a heavier duty coming by this route than that which was laid on the same wares brought in British ships from the colonies on the mainland; American ships could not export the products of other countries, could not engage in the coasting trade (could touch therefore, at only one West Indian port on a voyage), and were denied various other privileges reserved to British subjects. Smuggling still continued and a considerable proportion of the American exports to the West Indies was carried first to Canada, where the wares were "naturalized" and thence to the islands in British bottoms.

The issue of this question of the West Indian trade is significant in that it shows the decline in political influence of the American shipping interests, which had played a decisive part in determining our policy in the earlier period. With the spread of population inland the coast-dwellers sank in relative importance; Jackson's supporters in the interior accepted the settlement as satisfactory because it secured a market for their products, and they paid little attention to the route or ships by which the wares were carried.

Canadian Trade and Reciprocity, 1845–1866.—The later changes in the regulations governing trade between the United States and the British Empire belong to the history of British rather than American trade policy. The favors for which the United States had contended with pleas and threats were granted gratuitously by British statesmen from 1846 as they adopted the free trade policy, and applied it to the mother country and the crown colonies. In our relations with Canada, however, we had to deal with a country which, after 1845, had the power to determine its own commercial regulations; and our relations with this northern neighbor constitute an interesting chapter in our commercial policy at this period. Canada early (1847) made use of the new freedom, to abolish the differential

duties which had favored British products at the expense of those coming from the United States; but on both sides of the border discussion of the advantages of a closer commercial connection was carried on.

Attempts to secure action by legislation looking toward this end were failures, but under the influence of Lord Elgin, Canadian governor-general, the British Government opened negotiations with the United States, and in 1854 secured the ratification of a treaty which provided for the admission by each country free of duty, of a considerable number of the products (chiefly raw materials) of the other. Trade across the border increased considerably, and for a brief period the treaty was popular on both sides. Like every measure of the kind, however, it furthered some interests more than others, and was soon subjected to the sharp criticism not only of those who thought that they were hurt by its operation, but also of those who thought that they were not sufficiently helped by it.

The Civil War chilled relations between the American Government and the British; and both the United States and Canada for fiscal reasons found it desirable to raise the customs duties on imported wares. The advantages of the treaty were appreciated by the business men of both countries, but the treaty was soon on the defensive in the United States, and was abrogated by action of Congress and the President. The abrogation became effective in 1866. Political and commercial considerations showing themselves chiefly through certain special interests caused the abrogation.

General Commercial Relations in 1839.—In 1839, according to report of Secretary Forsythe, the Government had conventions regulating commercial intercourse with nineteen foreign powers.

Twelve of them had granted the most liberal terms then current, namely; equality of duties on navigation and commerce, both in the direct and indirect trade. These twelve included mainly states in South America or in the north, east and south of Europe, especially the German states of central Europe (Prussia, Hanseatic cities and Austria). Five countries, including Great Britain, France and the Netherlands accepted the principle of equality of duties, but restricted it to direct trade. A group of three countries (of small commercial importance) accepted only the principle of the most favored nation, and the remaining countries of the world were free to deal with our ships and wares as they might choose. Among them were Spain, Portugal, the two Sicilies and Belgium, several of the South American colonies and all of the native Asiatic states.

The next ten years marked, however, a notable decrease in the number of the European states with whom the United States had no commercial treaties, and a treaty of July 3, 1844, between the United States and the Ta Tsing Empire (*see* CHINA, DIPLOMATIC RELATIONS WITH) provided for commerce at five ports which China formally opened to our merchants.

Zollverein Dispute.—An attempt in 1844 to proceed beyond the terms of general equality of treatment, by specifying particular concessions, was a failure. Mr. Wheaton had arranged the terms of a treaty with the commercial union of the German states, called the *Zollverein*, which promised a reduction of the American duty on a number of manufactures in return for a reduction in the German duty on tobacco, and for some other favors. The treaty failed of confirmation in the Senate, partly because of doubt of its economic advantage, but principally because it was urged that the power of regulating commerce should rest in Congress as a whole.

In general, the tendency of this period, extending to about 1860, was to secure the removal of special obstacles rather than to provide for special favors. The United States was a party to the negotiations which led to the extinction of the sound dues (*see* DANISH SOUND DUES) 1857; and the Scheldt dues in 1863.

Effect of the Protective Policy since 1861.—The American Civil War marks the beginning of a new period in the commercial policy of the United States. The customs duties which, for fiscal reasons, were raised during the war, were retained after its close and were raised still further for purposes of protection. Manufactures extended with remarkable rapidity. The "home market" which protectionists believed they had furnished for this growing industry, was actually provided by the development of the transportation system which now brought into active, economic relations a large and vigorous population, spread over a vast territory remarkable for its rich and varied resources.

The attractions of the interior were now so great that attention was diverted from external interests; and the government which had at first displayed anxious solicitude for the furthering of foreign commercial relations seemed to have become indifferent to them. The people of Europe had to have our exports —cotton for clothing, wheat and meat for food, oil for lighting. They might offer what they could in exchange; we would take what we pleased, refusing the wares which we chose to make ourselves.

Before the war the American merchant marine was second only to the British. The war captures were a severe blow to our carrying trade, but the great reason for its decline was the superior opportunity to make money ashore. Americans could not afford to leave home to compete with foreign carriers.

Meanwhile the states of Europe outgrew the inherited system of commercial restrictions.

Beginning with the Cobden treaty of 1860, between France and England, the European governments vied with each other in reducing duties, for an equivalent advantage when they could secure one, but gratuitously in most cases. The government of the United States, therefore, had gained the desired privileges of trade. Remnants of the old retaliatory system in the form of discriminating taxes on shipping, were removed by independent action (France 1867, Brazil 1867), or by treaty (Nicaragua, 1867, Spain, 1884, etc.).

General tonnage duties had been abolished by Congress before the Civil War, but were reestablished. The Government, by the law of 1884, provided that vessels from Central and South America might enter our ports at half rates, provided our vessels bore no heavier charge in their ports than these rates as so reduced. Since the less favored countries objected to this local discrimination, a law of 1886 made the policy general, promising to any country a reduction in our tonnage dues to accord with the dues and charges which it levied on our vessels.

Experiments in Commercial Reciprocity, 1880–1900.—In policy affecting commerce, as distinguished from navigation, the earliest departure of the Government from its attitude of apathetic self-satisfaction appeared in a reciprocity treaty negotiated with Hawaii in 1876. The treaty provided for the admission of a number of articles free of duty on each side; but the object was political rather than economic—a step toward annexation.

After 1880 there were signs of more vigor in the movement favoring closer commercial relations with other countries. While protection remained still the national policy, its effect in hampering our export trade was felt by business men, who had begun to seek a foreign market not only for raw materials, but also for the products of American factories, and was recognized by statesmen in the Republican as well as in the Democratic party.

The negotiation of treaties of commercial reciprocity with Mexico in 1883 and with Spain, covering trade with Cuba and with Porto Rico, in 1884, was a significant departure from the policy of commercial exclusion, particularly since it was due to the initiative of a Republican administration. The treaties were unacceptable to the Democrats, who demanded a general reduction of the tariff, and were lost in a change of administration; but both parties were now committed to a policy which would stimulate exports and open foreign markets.

In 1890 Secretary Blaine, a Republican leader, insisted on the insertion of a reciprocity clause in the pending (McKinley) tariff bill, to further trade with South America (*see* TARIFF POLICY). The resulting enactment amounted to retaliation rather than to reciprocity, for it merely empowered the President to suspend the free importation of sugar, molasses, coffee, tea, and hides, and to impose specific duties on these wares, if they were exported from a country which levied on our wares duties which he might deem "reciprocally unjust and unreasonable." Under this legislation the Government negotiated treaties with a number of the Central and South American countries, with Germany, and with Austria-Hungary; and penalized several states which refused concessions.

The commercial benefits from these treaties were, however, very slight. They were left in force by the Democratic (Wilson) tariff act of 1894, but this act repealed the reciprocity provision under which they had been framed, and at the same time strained relations with a number of the treaty countries by restoring the duty on raw sugar, the most important commodity among those on which the reciprocity treaties had been based.

The Republican platform of 1896 contained a plank favoring commercial reciprocity, and the Dingley Tariff Act of 1897 elaborated the policy to which the party was pledged. So far as regards trade with South America, the elimination of sugar and hides from the free list, on which reciprocity treaties might be based, was an obstacle to negotiation for which no adequate remedy was provided; but an effort was made to further our commerce with European countries by a provision empowering the President to substitute lower duties for the specific rates set on wine and wine products, paintings and statuary, if corresponding concessions were granted to American products; and further, the President and Senate were authorized to negotiate treaties, granting a reduction in duties of twenty per cent and for a period extending to five years, on such wares of a foreign country as the negotiators might determine, if equivalent reductions on American wares were conceded by the country in question.

This last provision was of substantial promise, particularly as a basis of negotiation with European countries which were now adopting the system of a maximum and minimum tariff, or the system of bargaining by separate treaties, to force concessions from other countries. Under this clause several treaties were prepared, notably one with France, but none attained confirmation by the Senate, in which the protectionist sentiment was still dominant; and the actual results achieved under the other reciprocity clauses of the bill were of minor importance.

Commercial Policy since 1900.—The war with Spain added to the territory of the United States some outlying dependencies with which the country was obliged to arrange its commercial relations. Porto Rico (*see*) was made subject to a tariff on trade with the United States (April 12, 1900) for a brief period; a presidential proclamation of July 25, 1901,

repealed the duties and established free trade between the island and the United States. The Philippine Islands (*see*) from which came some articles competing with those produced in the United States, were treated less generously. The act of March 8, 1902, put in force the regular American tariff, as regarded imports into the islands, allowing the Philippine exports to enter the United States on payment of 75 per cent of the regular rates. The persistent agitation of those who urged a more favorable treatment of the commercial interests of the dependency led to the inclusion in the tariff act of 1909 of a section providing for free trade in general between the islands and the United States, but excepting rice and limiting the amount of sugar and tobacco which could enter the United States free of duty. With Cuba, which maintained a quasi-independent position, commerce was regulated by a reciprocity treaty of 1903, of which the most important provision was the grant of a reduction of 20 per cent from the regular duty on sugar imported from Cuba into the United States.

In the administration of President Taft (1909–1913) the chief features in commercial policy were, first, a new tariff, the Payne-Aldrich Act, which was particularly notable for the first adoption by the United States of the maximum and minimum principle in tariff. The normal rates of duty established by the act were not substantially different from the rates previously prevailing, but they were now to be granted only when the President was satisfied that a foreign country did not "unduly discriminate" accorded American products a treatment "reciprocal and equivalent." The maximum tariff, defined as the minimum duties plus 25 per cent ad valorem, was to be enforced against all countries which could not show good reason for more favorable treatment. The President was authorized to employ experts to assist in the administration of the law (*see* TARIFF BOARD); and in the end the minimum rates were granted to all countries with which the United States had commercial intercourse.

The second commercial policy of the administration was reciprocity with Canada. The President secured in 1911 an agreement with the Canadian authorities, subject to ratification by Congress, the first distinct case in which a detailed commercial agreement with another country was submitted in terms to both houses of Congress. The assent of both houses was obtained, but the Canadian administration appealed to the country in a general election on that issue and were defeated, so that the agreement lapsed.

See COMMERCE, GOVERNMENTAL CONTROL OF; COMMERCE, INTERNATIONAL; CONSULAR REGULATIONS; ECONOMIC HISTORY OF THE UNITED STATES; EMBARGO; EXCHANGE, PRINCIPLES OF; FOREIGN POLICY OF THE UNITED STATES; FREE TRADE AND PROTECTION; MOST FAVORED NATION; NAVIGATION, REGULATION OF; POSTAL SYSTEM OF THE UNITED STATES; PRIVATE PROPERTY AT SEA; SHIP BUILDING, REGULATION OF; SHIPPING, REGULATION OF; STATISTICS, OFFICIAL COLLECTION OF; SUBSIDIES TO SHIPPING; TARIFF POLICY OF THE UNITED STATES; WATERWAYS, NATURAL, REGULATION OF.

References: G. M. Fisk, *International Commercial Policies* (1907), *Handelspolitische Beziehungen zwischen Deutschland und den Vereinigten Staaten* (1900); Clive Day, *Hist. of Commerce* (1907); Laughlin and Willis, *Reciprocity* (1908); F. E. Haynes, *Reciprocity Treaty of 1854* (1892); C. Robinson, *Two Reciprocity Treaties* (1904); T. W. Page, "Earlier Commercial Policy of the U. S." in *Jour. of Pol. Econ.*, X (1902), 161–192.

CLIVE DAY.

COMMISSARY-GENERAL. The Commissary-General is the head of the Commissary-General's department of the United States Army. The duties of the department are to provide the sustenance for the army. The department decides upon and supplies rations, and supervises sales to officers and enlisted men of articles of food not supplied in the regular ration. **References:** Secretary of War, *Annual Report*; J. A. Fairlie, *National Administration of the U. S.* (1905), 143. A. N. H.

COMMISSION SYSTEM OF CITY GOVERNMENT

Definition.—City government by commission embodies a protest and a new policy in American municipal development. It is a protest against the old doctrine of division of powers in local government, and it is a proposition that all legislative and administrative powers shall be combined in the hands of the same few men.

The idea involved in the system of government by commission is not new, for in most of the states of the Union the administration of county affairs has been long since entrusted to small boards of three, five, or seven men, elected at large by the voters of the county; and this county board or commission has concentrated in its own hands all the various functions of county government whether legislative or administrative.

Application in Galveston.—In its application to city administration, however, the plan is novel, having made its first appearance in Galveston, Texas, in 1901. Prior to that date

Galveston was one of the most miserably governed cities in the United States, and under its old system of administration, which comprised a mayor, various elective officials, and a common council, its municipal history managed to afford frequent illustrations of almost every vice in local government. The city debt was permitted to increase steadily and the practice of borrowing to pay current expenses was, in part at least, responsible for this steady increase. City departments were managed wastefully, while political spoilsmen were given places of profit in the municipal service. The accounts of Galveston were so kept that no one could understand just what the financial situation really was; the citizens only knew that their tax rate was high and that they got poor service in return for large appropriations. The result was that a large element among the voters had become really discouraged with the existing situation and had ceased to take any interest in what went on at the City Hall.

Affairs were in this condition when, in 1901, a tidal wave swept over the city from the Gulf, destroying about one third of it, demoralizing its business interests and putting the municipal authorities face to face with the difficult problem of reconstruction. Before the disaster the city's financial condition was rather precarious; now its bonds dropped below par and it became apparent that the necessary funds for putting the city again on its feet could not be borrowed on the credit of the municipality except at exorbitant rates. In this situation a number of real estate owners in the city came together and agreed upon a radical measure of relief. They decided to ask the legislature that the city be virtually put into a receivership until its financial affairs could be properly readjusted. Their request, which secured the support of local public opinion, was that the old city government be swept away root and branch and that, for some years at any rate, a board of five business men should be given all powers formerly vested in the mayor, aldermen, common council, and supervisory branches of city government.

Galveston Plan.—The legislature agreed to this request and passed an act empowering the governor to appoint three of the five commissioners (the other two to be elected); and they were appointed. A year or two after they had taken office, however, a constitutional difficulty arose. In a matter which came before the courts it was held that in allowing appointive commissioners to select the local police justice, the legislative act had infringed a provision in the Texan constitution. Accordingly the legislature at once amended the law so as to provide that all five members of the Galveston commission should be chosen by popular vote, whereupon the three commissioners who had been holding office under the governor's appointment were endorsed by the voters.

The Galveston charter as thus amended in 1903 provides for the popular election, for two years, of five commissioners, one of whom is given the title of mayor president. All are elected at large. The mayor president is the presiding chairman at all meetings of the commission, but otherwise has no special powers. The commission by a majority vote enacts all ordinances and makes all the appropriations; likewise it supervises the enforcement of its own ordinances and disburses its own appropriations. It handles all questions relating to franchises and locations in the city streets, all awards of contracts for public works, and makes all appointments. The five commissioners apportion among themselves the headships of the various administrative departments into which the business of the city is grouped so that one commissioner is therefore directly responsible for the routine and direction of each branch of business.

Other Texan Cities.—The Galveston plan was not intended to establish a permanent system of government for that city; its plan and purpose was to enable the municipality to tide over a difficult emergency. It was put together hastily with the experience of no other American city to serve as a guide and it vested in the hands of a small body of men much more extensive power than most cities would care to give to them. But the lapse of a few years proved very conclusively that the new Galveston system, though hastily and crudely framed, was a godsend to the stricken city. It served to arouse civic spirit, it helped the business interests of the city to recover, and in an unexpectedly short time the place was again on its feet financially and otherwise. Hence developed a conviction that commission government was a good system to maintain permanently, and it was not long before the other cities of Texas, noting the new conditions in Galveston, came forward and asked the legislature for similar charters. Within five years after the inauguration of the experiment in Galveston, commission charters had been given to all the important cities of the state including Houston, Dallas, El Paso, Austin, and Fort Worth.

Des Moines Plan.—These Texan experiments quite naturally attracted attention in other states and the reform organizations in various northern cities began to discuss the possibility of applying the scheme to the solution of their own problems. In 1906 the legislature of Iowa, in compliance with strongly supported petitions from citizens of Des Moines, passed an act permitting the establishment of a scheme of commission government in that city, and in the year following Des Moines took advantage of this legislation to install the new plan of government. The Des Moines plan was simply a new and revised edition of that which had been established in Galveston, similar in outline but embodying some new fea-

tures. In brief, it provided for a commission consisting of a mayor and four councillors, all elected at large for a two-year term. To this body was entrusted, as in Galveston, all the powers hitherto vested in the mayor, city council, and the other administrative boards and officials which the city had maintained. But, in addition, the Des Moines plan provided what the Galveston arrangement did not provide, a place for what are commonly termed the newer agencies of democracy, namely, the initiative, referendum, and recall. It furthermore adopted the plan of nomination by an open non-partisan primary. By the terms of the Des Moines charter twenty-five per cent of the qualified voters of the city may propose any ordinance and may directly enact it into force by a referendum. Twenty per cent of the qualified voters may, by petition, demand a recall election for the removal of any member of the council before his term of office has expired. Nominations of candidates are made at an open primary which gives no recognition to organized political parties, and the ballots used at the subsequent elections bear no party designations.

Des Moines under the New Régime.—The new régime in Des Moines had a seemingly inauspicious beginning. Those prominent citizens who had been behind the new charter movement put forward their slate of business and professional men who had not been prominent in the partisan politics of the city under the old disposition. This slate was strongly supported for election but failed at the polls, and the first council selected under the new charter was made up of men who had been rather closely affiliated with the old order and who were commonly believed to be more proficient as politicians than as administrative experts. It was accordingly assumed in many quarters that commission government meant nothing more than an old type administration under a new name. But the error of this assumption was soon made apparent. The experience of a few years proved that, so far as the efficiency of city administration is concerned, the calibre and qualifications of the men who are placed in office are not more important than the system under which they do their work. Men who were elected to the first Des Moines council under the new charter proved able to give service far superior to that which the old system had ever permitted them to render and there seems now to be no serious question that the conduct of the city's affairs has been very much more satisfactory since 1907 than it was during the years preceding that date.

The Sumter Plan.—The Sumter (S. C.) plan of city government, adopted June 11, 1912, is a combination of some of the best features of the commission form with the city-manager idea. The "Columbia bill" embodying the general features of the Des Moines act was amended to provide a special plan for Sumter. This amendment requires the commission to engage a city manager, empowering the commission to employ a person (male) of sound discretion and of good moral character, not of their number, at such salary and upon such terms as they may decide, who shall be subject to such rules and regulations as may be provided by the councilmen. It also further provides that under this form the mayor shall be paid an annual salary of only $300 and the councilmen $200 each.

Extension Throughout the United States.—Since its adoption in Des Moines the principle of the commission system has spread very rapidly over the whole country. About two hundred and thirty cities scattered through more than a score of different states have already (1913) abolished the old system and established the new. Many of these are cities with populations exceeding fifty thousand, but in general the commission plan seems to appeal more strongly to the smaller urban communities. A list of the cities which have adopted commission government or some variation of it is given opposite. This list is complete to April 30, 1913, but many cities have new charters in readiness to submit to the voters and during the next few years many additions to the list will in all probability be made. To April 30, 1913, the system was abandoned after trial by only one municipality, Duncan, Okla., which voted, April 1, 1913, to abandon the commission system and revert to its original form of government.

Concentration of Responsibility.—In its actual working the system has shown itself possessed of many important advantages. Of these the most striking arises obviously from the fact that the commission plan puts an end to that intolerable diffusion of powers, duties and responsibilities which the old type of city government fostered to the point of absurdity. By enabling public opinion to concentrate itself upon a narrow and well-defined area of administration, it makes the scrutiny which the voters can apply to the conduct of their representatives real and not perfunctory. The system does not guarantee that the city's administration shall be free from good ground for criticism; it only guarantees that where administration is faulty there shall be definite shoulders upon which to place the blame. Responsibility cannot be shifted from shoulder to shoulder among the different municipal authorities as it has heretofore been in almost every city of the land. In thus eliminating the system of checks and balances which in local government is merely a name for confusion and the shifting of responsibility, the new system promises relief from a feature which has been scarcely other than vicious from first to last.

Advocates and sponsors of commission government point out that the management of

COMMISSION GOVERNED CITIES, MAY 1, 1913.

ALABAMA.—Birmingham, Cordova, Hartsville, Huntsville, Mobile, Montgomery, Sheffield, Talledega, Tuscaloosa.
ARIZONA.—Phoenix.
ARKANSAS.—Fort Smith.
CALIFORNIA.—Berkeley, Modesto, Monterey, Oakland, Pasadena, Pomona, Riverside, San Bernardino, Sacramento, San Diego, San Luis Obispo, San Mateo, Santa Cruz, Stockton, Vallejo.
COLORADO.—Colorado City, Colorado Springs, Denver, Durango, Fort Collins, Grand Junction, Montrose, Pueblo.
FLORIDA.—Tampa (advisory vote only).
GEORGIA.—Cartersville.
IDAHO.—Boise, Lewiston.
ILLINOIS.—Braceville, Cairo, Carbondale, Clinton, Decatur, Dixon, Elgin, Forest Park, Hamilton, Harvey, Hillsboro, Jacksonville, Kewanee, Marseilles, Moline, Murphysboro, Ottawa, Pekin, Rochelle, Rock Island, Springfield, Spring Valley, Stirling, Waukegan.
IOWA.—Burlington, Cedar Rapids, Davenport, Des Moines, Fort Dodge, Keokuk, Marshalltown, Ottumwa, Sioux City.
KANSAS.—Abilene, Anthony, Arkansas City, Caldwell, Chanute, Cherryville, Coffeyville, Council Grove, Dodge City, Emporia, Eureka, Garnett, Girard, Great Bend, Holton, Hutchinson, Independence, Iola, Junction City, Kansas City, Kingman, Lawrence, Leavenworth, Manhattan, Marion, Neodesha, Newton, Olathe, Ottawa, Parsons, Pittsburg, Pratt, Sabetha, Topeka, Wellington, Wichita.
KENTUCKY.—Covington, Lexington, Newport.
LOUISIANA.—Alexandria, Donaldsonville, Hammond, Lake Charles, New Iberia, New Orleans (modified), Shreveport.
MAINE.—Gardiner.
MARYLAND.—Cumberland.
MASSACHUSETTS.—Gloucester, Haverhill, Lawrence, Lowell, Lynn, Salem, Taunton.
MICHIGAN.—Bay City, Fremont, Harbor Beach, Pontiac, Port Huron, St. Joseph, Traverse City, Wyandotte.
MINNESOTA.—Duluth, Faribault, Mankato, St. Cloud, St. Paul, Tower.
MISSISSIPPI.—Clarksdale, Gulfport, Hattiesburg, Jackson, Laurel, Meriden, Vicksburg.
MISSOURI.—St. Joseph (modified).
MONTANA.—Missoula, Polson.
NEBRASKA.—Beatrice, Lincoln, Nebraska City, Omaha.
NEW JERSEY.—Atlantic City, Bordentown, Deal Beach, Hawthorne, Irvington, Jersey City, Long Branch, Longport, Millville, Nutley, Ocean City, Passaic, Ridgefield Park, Ridgewood, Trenton, Vineland, Wallington, Wildwood.
NEW MEXICO.—Roswell (modified).
NORTH CAROLINA.—Greensboro, High Point, Raleigh, Wilmington.
NORTH DAKOTA.—Bismarck, Mandan, Minot.
OHIO.—Norwood.
OKLAHOMA.—Ada, Ardmore, Bartlesville, Claremont, Collinsville, Durant, El Reno, Enid, Guthrie, Holdenville, Lawton, McAlester, Miami, Muskogee, Oklahoma City, Okmulgee, Purcell, Sapulpa, Stillwater, Tulsa, Wagoner.
OREGON.—Baker City.
PENNSYLVANIA.—Pittsburgh (modified).
SOUTH CAROLINA.—Columbia, Florence, Sumter (city manager plan).
SOUTH DAKOTA.—Aberdeen, Canton, Chamberlain, Dell Rapids, Huron, Lead, Madison, Pierre, Rapid City, Sioux Falls, Vermillion, Watertown, Yankton.
TENNESSEE.—Chattanooga, Knoxville, Memphis.
TEXAS.—Amarillo, Anson, Arkansas Pass, Austin, Barry, Beaumont (modified), Bishop, Corpus Christi, Dallas, Denison, Elkhart, El Paso, Fort Worth, Franklin, Frankston, Galveston, Greenville (partial), Harlingen, Houston, Kennedy, Lyford, MacKinney, Marshall, Marble Falls, Nocona, Orange, Palestine, Port Arthur, Port Lavaca, Sherman, Somerville, Spur, Taylor, Terrell, Waco, Willis.
UTAH.—Logan, Murray, Ogden, Provo, Salt Lake City.
WASHINGTON.—Centralia, Chehalis, Everett, Hoquiam, North Yakima, Seattle (semi-commission), Spokane, Tacoma, Walla Walla.
WEST VIRGINIA.—Bluefield, Charleston, Grafton, Huntington, Parkersburg.
WISCONSIN.—Appleton, Ashland, Eau Claire, Janesville, Ladysmith, Menominee, Oshkosh, Portage, Rice Lake, Superior.
WYOMING.—Sheridan.

a city's affairs is not government but business. The so-termed city government, they urge, is not primarily the maker of laws and ordinances. It is a body which combines the work of a construction company, a purveyor of water, of sewerage facilities and fire protection, an accounting and auditing corporation, an agency through which the people deal with public service corporations, etc. Its day-by-day function can scarcely, by any stretch of the imagination, be termed political or governmental. Let one go through the records of a city council's meeting and take out the items which can be properly classed as legislation: the list of such will be short indeed. By far the greater part of the council's time is taken up with matters of routine and detailed administration which differ slightly, if at all, from the ordinary operations of any board of business directions. And no business concern could reasonably hope to keep itself permanently out of the hands of a receiver if it had to conduct its operations with any such clumsy and complicated machinery as that which most American cities have had imposed upon them.

On the other hand, it is undeniable that a city is something more than a profit-seeking business enterprise. The affairs of municipalities cannot be conducted in defiance of public opinion or even in disregard of it, whereas business management may or may not bend to popular pressure as it may deem expedient, and expediency is here another word for profitableness. To compare municipal with private administration from the standpoint of economy or efficiency is, therefore, unfair unless you make liberal allowances, for it should never be forgotten that a city government must give its people the sort of administration they happen to want and not simply that which seems to be best and cheapest. All this, however, is not to deny that there is abundant room for the application of business principles in city administration or that measures which simplify administrative machinery invariably promise greater efficiency.

Promptness in the Despatch of Business.—The commission system promotes promptness and helps to eliminate friction in the conduct of the city's affairs. In a multitude of counsellors there may be wisdom, but the history of those municipalities which have maintained large deliberative bodies gives us the impression that this wisdom is not of a very high type. Unwieldy councils have been put upon American cities under the delusion that democracy somehow or other must inevitably associate itself with numbers. There seems to be a notion in the public mind, and it is as deep-seated as illusive, that a city council cannot be representative unless it is large to the point of uselessness for effective action. But even deliberative bodies reach a point of diminishing returns and American municipal

experience seems to show that this point is very easily attained. The city council of Boston, prior to 1909, contained eighty-eight members and, if mere members gave any assurance of serious care for the public interests, this body should have given some exemplification of the fact. But as every one realized, this council was composed almost wholly of men who were not representative citizens and who gave no serious attention to the duties which they were supposed to perform. A sufficient commentary upon the way in which this council did its business is afforded by the fact that it maintained nearly fifty standing committees not half of which met even once a year.

Simplification of the Machinery of City Government.—What has been said of the old city council in Boston can be said without much reservation of all large bi-cameral city councils. They are ill-adapted to the work which they are expected to do. To say that they display greater regard for the interests of the whole people or more conservative judgment in the handling of large questions than do small councils of five, seven, or nine men is to disregard a half-century of American municipal experience. The history of large councils in general is little more than a record of inefficiency, friction, and a mastery of nothing but the art of wasting time and money. A small council at least offers the possibility of despatch in business; its smallness removes a great incentive to fruitless debate; and it affords no opportunity for resort to the chicanery and subterfuge which have been so characteristic of larger municipal legislatures.

Better Men in Municipal Office.—Municipal administration in the last analysis is about equally a question of men and of methods. Efficiency and economy in the conduct of city affairs require both a satisfactory system and a satisfactory personnel. The advocates of commission government urge that their proposals promise improvement in both of the foregoing directions. They claim that commission government will secure for the city better men in public office, and in support of this assurance they appeal both to the logic of the situation and to municipal experience. In all branches of the public service the quality of men in office is apt to be proportioned to the degree of power and responsibility which they are expected to assume, and this is true. Men of meagre experience and less capacity have often been chosen to large city councils simply because, at the worst, their presence there could do little harm owing to the stringent checks placed upon them. When membership in a city council means that a man may exercise one-seventy-fifth part of less than one-third of the city's governmental authority, it is not surprising that the post of councillor appeals only to men whose standing in the community is negligible. If all municipal powers, administrative and legislative, are massed together in the hands of five men, each of these men is given opportunity to become a real power in the community and the incentive to men of public spirit is thereby greatly increased. At any rate, the experience of Galveston, Des Moines, Spokane, Haverhill, and many other cities seems, so far as it goes, to prove that under the commission plan the voters get a better list of candidates to choose from; that they make their selections for reasons which are fair and relevant; and that when commissioners do their work properly they are almost certain to be re-elected.

Is the System Oligarchic?—It is commonly urged that commission government is government by a small oligarchy; that it is un-American in principle; that it fails to secure adequate representation of the electorate. All of these objections are as easy to urge as they are difficult to sustain. To urge that because a governmental body is small it must inevitably be bureaucratic and unresponsive to popular opinion, is merely to afford a good illustration of politicians' logic. Responsiveness depends upon the directness of the control which the voters are able to exercise over those whom they place in office. This, again, hinges largely upon such matters as the concentration of responsibility for official acts, adequate publicity, and the elimination of those devices, such as party designation, which serve to confuse the issues presented to the voters at the polls. Indeed, it might almost be laid down as an axiom deducible from American municipal experience that the smaller the elective body the more thorough its accountability to the electorate. If one only brushes away the shallow sophistry of those who urge retention of a large city council as a means of ensuring responsibility to popular sentiment and takes cognizance only of the outstanding facts in a half-century of events in American history, it will appear quite readily that the demand for a large city council is nothing more than a plea for the continuance of mediocrity in public office, of sectionalism in city politics and of a responsibility which directs itself to a few political leaders rather than to the whole muncipal electorate.

Is the System Adequately Representative?—Commission government, we are often told, is inadequately representative. Five members, chosen at large, cannot hope to give proper representation to the varied interests, political, geographical, racial, and industrial, in any large municipality. And if it be true that, in the conduct of these local affairs, a voter cannot be adequately represented except by one of his own neighborhood, race, religion, politics, or business interests, then this criticism seems entirely reasonable. But is not this the *reductio ad absurdum* of a representative principle? Would not a recognition of this doctrine more than preclude all hope of a

municipal administration loyal to the best interests of the city as a whole, and would it not reduce every issue to the plane of inter-neighborhood and inter-racial squabbles? It has been proved frequently that a single official, such as the President of the nation or the governor of a state or the mayor of a city, may more truly represent popular opinion than a whole Congress or state legislature or municipal council. Popular opinion is not, after all, very difficult to ascertain when a public officer seeks to ascertain it. Five members can do it quite as well as fifty, and they are much more likely to try. A council of fifty men means ward representation, and ward representation, in turn, means that the fifty councilmen are likely to be citizens of narrow political horizon and of strong sectional prejudices. It does not mean, as a matter of experience, that all the interests of the electorate will be represented; on the contrary, it more often means that the most important interests will have no chance of representation in the council at all. It means that citizens who are not actually interested in ward politics will be unrepresented, while the alert politicians will be grossly over-represented. There is one interest, and one only, to which the large council can with certainty be depended upon to give adequate representation, and that is the machine of the dominant political party. That it will ensure fair representation for all the varied interests which exist among the electorate is a fiction that has no real existence outside the ward room.

Does the System Permit Sinister Control?—"It is almost a maxim that the smaller the body, the easier it is to reach and influence." Thus runs the gist of an argument commonly put forward by the opponents of the commission plan. The implication is that it is easier for public service corporations or for the liquor interests or for the numerous seekers after the loaves and fishes in the city administration to corrupt or coerce five councillors than fifty. The difficulty with this argument is, unfortunately, that it rests upon a false assumption. It takes for granted that, where a city has a large council, sinister influences exert themselves directly upon councilmen and that since the forces of corruption or coercion must deal with many persons, the chances of their succeeding are minimized. But as every one who has had to do with municipal politics knows very well, this is not the case. The ordinary city council is made up of men most of whom owe their nomination and election to political leaders. The councillors are, accordingly, under political obligations to these leaders and take their orders from them. A few bosses, sometimes a single boss, frequently control a majority of the council and are able to deliver the necessary votes to any proposition which they favor. Corporations or contractors who wish to get what they are not entitled to, do not in practice approach the council through its members one by one. They know municipal machinery too well for this and consequently deal with the middleman, that is to say, with the political leader who controls the necessary councilmen. This means that they deal with two or three men not with fifty; it means, furthermore, that the few men with whom they deal are persons without any official responsibility, political bosses who were not given authority by the voters and are consequently not accountable to them for its abuse.

Under commission government a private interest has to deal, not with a few middlemen who have the votes of others to deliver, but with five men who are free to act as they think best and who must act with the eyes of the voters upon them. If a small council means concentration of power, it also means centralization of responsibility. The large council system, on the other hand, involves, as a matter of fact, an equal concentration of power in a few hands, but no centralization of responsibility at all. Centralization of power we are likely to have in any case, and must have if public business is to be conducted with any degree of promptness and efficiency. No matter what the frame of city government may be, the dominating influence is pretty sure to gravitate into the hands of a few men. The issue as between large and small councils is, therefore, largely a question as to whether these few men shall be chosen directly by the voters and directly responsible to them, or whether they shall be political manipulators without any direct responsibility. Philadelphia has a municipal legislature which comprises in both its branches no fewer than one hundred and ninety members. Yet there is no city in the United States where corrupt interest working through a small group of professional politicians has so completely and so consistently controlled the action of a majority of these councilmen upon all important questions of municipal policy. It is not in the size of its municipal council that a city may reasonably hope to find assurance against malfeasance in management of its affairs, against the bartering away of valuable privileges for inadequate return, or against the subordination of the public welfare to private avarice. It is rather in the size of the men who compose the council. There seems to be more security in five men of adequate calibre, working in the full glare of publicity and directly accountable to the people or city than in ten times as many men of the type usually found in the ranks of large municipal councils.

Coördination of Appropriation and Expenditure.—Objection has been urged against commission government on the ground that it places in the hands of a single small body of men the power both to appropriate and to spend public moneys. This, it has been said and said truly, violates an established prin-

ciple of American government which demands that these two powers, in the interest of economy and honesty, shall be lodged in different hands. In keeping with this doctrine Congress makes the appropriations for the general expenses of national government, but the national executive disburses the funds so appropriated. State legislatures make appropriations, but state administrative officers spend the money. Even in the government of the New England town, its town meeting and not the board of selectmen decides what funds shall be appropriated. And in the usual type of city administration the council appropriates from the city's income and the executive officials make the actual outlay. From this traditional separation of powers the commission plan proposes a very radical departure. It commits to a single small board the power of fixing the annual tax rate, of appropriating the revenues to the different departments, and of supervising the detailed expenditure of the funds so apportioned. Yet although this plan is novel, it is not necessarily on that account either dangerous or objectionable. Many new features have come into American government during recent years—the Australian ballot, civil service examinations, open primaries, the initiative, referendum and recall, preferential voting, public service commissions—and all of them have had to face the cry that they involved departure from the time-honored ways of doing things in this country. So far as cities have had experience with this feature of commission government they seem to have found that the concentration of appropriating and spending powers in the same hands promotes greater care in making appropriations and greater zeal in keeping within them.

Relation to Other Reforms.—Looked at in a broad way, the greatest merit of the commission plan is that it links itself readily with a dozen or more things which, if they can be woven into the fabric of American government, promise a marked improvement in administrative efficiency. Such are nomination by open primaries or by petition, the abolition of ward representation, the short ballot, the meric system, the extirpation of patronage in contracts, publicity of all municipal transactions, and uniform accounting. Whatever may be its future development, the commission system has at least emphasized the need of simplifying the machinery of local government.

See Boards, Municipal; Centralization; Charters, Municipal; Checks and Balances; City and the State; Council, Municipal; Executive and Executive Reform; Executive Power, Theory of; Local Self-Government; Mayor and Executive Power in Cities; Municipal Government in the United States; Recall.

References: Ford H. MacGregor, *Commission Government* in University of Wisconsin Publications (1911); E. H. Bradford, *Government of Cities by Commission* (1911); C. R. Woodruff, Ed., "City Government by Commission" in *National Municipal League Series*, I (1911); E. Clyde Robbins, Ed., *Selected Articles on the Commission Plan of Municipal Government* (1909); C. A. Beard, *Digest of Short Ballot Charters* (1911); H. Bruère, *New City Gov.* (1912); W. B. Munro, *Gov. of Am. Cities* (1912); *Am. Year Book, 1910*, and Year by Year.

William Bennett Munro.

COMMISSIONERS, DIPLOMATIC. Commissioner, while not strictly a diplomatic term is sometimes used, as are other terms, to designate one who is sent by a state to represent it in some special business which is ordinarily of a quasi-diplomatic character. Such officers have been sent to states with which the United States has not yet entered upon formal diplomatic relations (*see* Latin America). The duties of such agents have varied as well as their salaries and method of appointment. When the commission upon which the representatives are to serve is one established by Congress the method of appointment and other details are usually prescribed. In the case of the appointment of Commissioner Blount sent by President Cleveland to Hawaii in 1893 and given "paramount authority" in matters touching the relations of the United States and Hawaii (*see*) the authority was extreme and the method unusual. The appointment of commissioners to negotiate the treaty of peace between Spain and the United States in 1898 was according to established precedent. The earliest American commission was appointed in 1776 by the Continental Congress to take charge of affairs in Europe and to procure an alliance with France. **See** Diplomacy and Diplomatic Usage; Diplomatic Service of the United States; Treaties in International Law. **Reference:** J. B. Moore, *Digest of Int. Law* (1906).

G. G. W.

COMMISSIONS IN AMERICAN GOVERNMENT

Definitions.—On the side of technical administration doubtless the most striking development in American government has been in the number and variety of commissions employed for almost every conceivable purpose and enjoying powers ranging from those of a temporary commission appointed to purchase a portrait for a state capitol to the Interstate Commerce Commission (*see*) which regulates vast national enterprises. These commissions fall into two types: legislative and executive. The term commission is not clearly defined in

the public mind, but in general it is applied to a small group of men elected or appointed to discharge a public service either temporary or continuous.

Legislative Commissions.—The legislative commission is usually composed of members of one or both houses of the legislature (sometimes supplemented by non-members) and it is commonly employed in investigating some particular topic which is about to be the subject of legislative action. Notable examples of this type are the Industrial Commission (*see*) composed of five members of the House of Representatives, five Senators, and nine persons appointed by the President, created by Congress in 1898, for the purpose of investigating questions appertaining to labor, agriculture, and business, and reporting to Congress the results of the investigations and suggestions as to legislation upon these particular subjects; and the Armstrong Insurance Commission of New York (1905) which investigated the life insurance business of that state and startled the country by its revelations of neglect of duty on the part of responsible insurance officials. The practical results accruing from such legislative commissions so far as legislation is concerned are often limited; no important national legislation, for instance, can be traced to the many volume report prepared by the Industrial Commission of 1898. Nevertheless, the materials thus accumulated often have a high scientific value, and in time exercise an educative influence on the public mind. It too often happens that these legislative commissions are created more for the purpose of giving employment to decayed politicians than of reaching useful results. On the other hand it frequently happens that the investigations of such commissions are soon followed by legislative action; this was true in the case of the Armstrong Insurance Commission of New York which instituted important reformatory legislation. In the case of legislative commissions it is often difficult to distinguish between commissions and mere committees of the legislature appointed for the purpose of holding hearings on special topics.

Executive Commissions.—It is in the field of executive and administrative work that the commission has assumed particular importance. Here one encounters a bewildering variety. Some are only temporary such as a commission to supervise the construction of a public building or public works, or to investigate particular claims. Other commissions are designated for specific executive work, and these range in power from a state library commission which supervises the expenditure of state funds appropriated for library purposes to the Public Service Commission (*see*) which regulates the rights of railways and public service corporations, and dictates the conditions under which they must discharge their functions. Finally, we have the commission employed on a large scale in the government of municipalities (*see* COMMISSION SYSTEM OF CITY GOVERNMENT; MUNICIPAL GOVERNMENT IN THE UNITED STATES).

The executive boards and commissions may be classified under the following heads: (1) industrial—such as boards of agriculture, fish and game inspectors, factory and workship commissions; (2) scientific—health, labor statistics, drainage, and geological survey; (3) supervisory—railway, insurance, and banking commissions; (4) examining—dental, veterinarian and educational and civil service commissions; (5) executive—canal boards, highway commissions, sewage committees, employed in the execution of particular enterprises; (6) educational—the educational commissions and public library commissions; (7) corrective and philanthropic—charity, prison, and hospital boards.

The number of these various commissions of course varies greatly in different states. Massachusetts (*see*), however, seems to lead in the number and variety; over twenty years ago that state had more than twenty-five commissions, and over a hundred trustees of public institutions, and these have been increased. As a rule, the states that have the most diversified economic development have the largest number of commissions, although the agricultural state of Kansas (*see*) is scarcely behind some of the eastern manufacturing states. In the South the development of the commission as an instrument of government has been particularly slow.

Origins.—The origin of the commission may be traced to several sources. In early times it was a practice of the legislature to refer matters of particular importance to standing and special committees for investigation and report. It was the short legislative session, the lack of technical skill and the want of leisure on the part of the badly paid members of the legislature that were largely responsible for the creation of the special committee or commission composed not only of legislators but also of outside persons particularly qualified for the task. The origin of the executive committee may be traced to the old English practice of employing a board for specific administrative work, a practice which was followed by the Continental Congress (*see*) during the American Revolution. This practice was supposed to be democratic, and in France during the Revolution the Convention and Assembly used committees, directories, commissions, and boards for handling all classes of executive work.

The extensive employment of the commission during recent years is due to the multiplicity of executive functions which have grown out of our complex industrial life. Many questions upon which the legislature must pass cannot be settled by a simple fiat. It is agreed on

every hand that in the light of the experience of the last fifty years public service corporations (*see*) cannot be allowed to do as they please; but it is obvious that the legislature cannot provide all of the minute and specific regulations required to control the multifarious operations of railway, gas, express, and other companies. Furthermore, there would be an obvious injustice if the legislature prescribed uniform flat rates for all companies, regardless of the volume of business or the conditions under which they operated. Under these circumstances legislatures have practically been forced to commit the formulation of specific regulations to administrative authorities; and they have chosen the commission as the most desirable type of authority to be employed for the particular purpose. It cannot be said that the use of the commission, instead of the single-headed department, has been the result of any reasoned conclusions. Often the commission is employed for the purpose of giving partisan representation, upon the theory that the representatives of the two dominant parties will check and control each other; but it must be admitted that this theory has not worked in practice. Sometimes the commission has been employed because the important functions delegated to it are of such a character as to require that deliberation necessary to wise legislation. Sometimes the commission has been selected in order to give various parts of the state representation in the discharge of an important administrative function. Sometimes it has been employed because legislatures have been unwilling to vest what seemed to them too much authority in the hands of a single officer.

Absence of Coördination.—In the construction of these commissions no uniform principles have been applied. The number runs from three upwards, with a tendency toward five or seven. Some commissions are appointed by the governor or the legislature, and others are elected by popular vote. No uniform methods of removal have been adopted. In some instances they are removable only by impeachment, and in some rare instances, as for example, the New York Public Service Commission, they may be removed by the governor without the concurrence of either branch of the legislature. Where the governor enjoys the appointing and removing power no effort seems to have been made to coördinate the term of state commissions with that of the governor, in order to give the latter that administrative control which the responsibility reposed in him requires. Speaking generally, no attempt has been made to coördinate the various commissions of any state or municipality. State commissions are for the most part well nigh irresponsible owing to the conditions under which they are appointed and removed. An able writer has remarked that the commission system really establishes a fourth department of the government which is responsible neither to the voters nor to the legislature nor to the executive.

Judicial Control.—Substantially, the only control to which the commission is subjected is judicial, and it can hardly be said that this control conduces to administrative efficiency. The courts will declare invalid acts of commissions which exceed their statutory authority or which amount to a deprivation of life, liberty or property without due process (*see* DUE PROCESS OF LAW). One of the most important cases on the due-process point is that of the Chicago, etc. Railway Company *vs.* Minnesota (134 *U. S.* 418), in which the Supreme Court declared invalid an act of the Minnesota legislature authorizing the state railway commission to fix finally and conclusively equitable and reasonable charges subject to no judicial review—on the ground that it deprived the company of its right to a judicial investigation by due process of law under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of the matter in controversy (*see* COMMERCE, GOVERNMENTAL CONTROL OF; GRANGER CASES; MUNN *vs.* ILLINOIS; PRICES AND CHARGES). Where, however, the persons affected are given hearings before the commissions and judicial supervision is permitted by law, the Supreme Court may declare invalid any particular rate fixed by the commission on the ground that it is so "unreasonable" as to constitute the taking of property "without due process." The court does not undertake, of course, to fix the limits of a reasonable rate. It considers only the question as to whether any particular rate fixed by a commission is reasonable, that is, allows proper returns on investments. Thus, although the courts do not have that intimate expert knowledge of all the facts in any particular case on which the commission has acted, they pass upon the validity of such acts, delaying and setting aside the orders of commissions. The recognition of this fact was largely responsible for the creation of the federal Commerce Court whose chief business, until its abolition on December 31, 1913, was in reviewing the decisions and orders of the Interstate Commerce Commission.

The commission is under judicial control not only as to the constitutionality of its acts, but also as to the limits of the authority conferred upon it by the legislature. Sometimes, as in the case of a public records board, for instance, the statutory power conferred is not difficult to ascertain, but in the case of all important commissions, especially those which have a quasi-law-making power, the statutory authority is often the subject of controversy. This is particularly true of those commissions whose activities bring them in conflict with other state and local authorities. Indeed, in the construction of commissions, as in the for-

mation of state constitutions, serious difficulties arise in drawing the limits between state and local authorities. Here government by commissions involves the whole problem of centralization in administration. Indeed, it is frequently through the commission that the state-wide activities assumed by the commonwealth at the expense of the locality are actually carried out. This is particularly noticeable in the case of tax (*see*), charity (*see* CHARITIES), health (*see*), highway (see STREET COMMISSIONERS), and public service (*see*) commissions, which are constantly being called upon in the administration of the law to distribute the burdens between the state and the community, maintaining on the one hand higher standards of administration, and on the other hand avoiding the pauperization of the locality.

Powers.—We find great variety and confusion in the powers of commissions. A geological commission, for example, may be charged with the simple duty of making a geological survey of the state and publishing the technical data resulting therefrom. Such a commission does not legislate under the form of executive orders, for its functions are non-elastic. The banking commission generally has little or no law-making power, but by its lax or strict interpretation of the law it may set the standards for banking throughout the commonwealth. A state railway or public service commission is generally a law-making body on a large scale for the tendency is away from the old Massachusetts type where the board merely has the power "to direct attention to cases of neglect, ill-treatment, overcharges, etc. by the railroads but no power to compel obedience." The newer commissions, as for example, the Public Service Commission of New York, may issue orders requiring the railroads to furnish safeguards and adequate services and facilities, to regulate their charges according to the rates fixed by the commission, to provide proper switch and side-track connections, and to keep open for public inspection the rates and fares and charges as prescribed by the commission. Even more powerful within a much smaller range is the average board of health which generally has drastic authority "in condemning property, isolating individuals, and establishing quarantines," authority which the courts have a tendency to interpret generously.

Criticism.—In view of this variety in the construction and powers of commissions it is obviously impossible to make vâlid generalizations as to the efficiency of the commission system. Moreover, the character of commissions of the same type differs widely from state to state and from time to time in the same commonwealth. For example, the connections between the railroads and the railway commissions in some of the western states have been notorious and corrupt; while, on the other hand, the Public Service Commission of New York has been justly celebrated for the integrity of its membership, if not for its efficient work. Some of the commissions, as for instance those controlling the dental and veterinary professions, have been used not merely for the purpose of excluding the unfit from practice, but also for restricting competition. The standards of commissions will often vary greatly in the same commonwealth. Within recent years there has grown up a strong tendency to exclude politics from educational and charity boards; but with regard to other boards, the pressure subjecting them to the spoils system has generally been too strong to be resisted wherever the law provides for appointment.

Under the circumstances it is not surprising that government by commissions is subjected to no little criticism. They have proved to be expensive instrumentalities. A new committee immediately discovers ways of widening its activities and begins to demand larger appropriations of the legislature. Moreover, as already said, there is lack of coördination and of responsibility. It can hardly be held that state commissions, especially those charged with important functions, have been efficient in fulfilling the purpose for which they were created. This is partially due to the inherent defects of the system, and partly to the limited powers which commissions enjoy. On the other hand, the Interstate Commerce Commission has efficiently discharged the functions vested in it. Inefficiency does not seem to be necessarily inherent in the commission.

Nevertheless, a movement has set in against the further extension of the principle of executive commissions. This is particularly noticeable in municipal governments where the practice of employing boards (*see*) for various municipal functions, is being questioned sharply. In our great cities, instead of the commissions of three or five men, we generally find the single-headed administrative department. In fact, the use of commissions in municipalities is now widely discredited in favor of the departmental form which is employed in the Federal Government (except notably in the case of the Interstate Commerce and Civil Service Commissions). In the case of the state government, however, the movement for the consolidation of executive work in the hands of departmental authorities has scarcely begun, but in the recent messages of governors there is found plenty of evidence of dissatisfaction with the commission system. Governor Hughes in New York (*see* HUGHES, CHARLES EVANS) several times during his term called the attention of the legislature to the disintegrated character of the administrative system of New York, and declared that no governor could assume responsibility as chief executive over such a heterogeneous collection of executive authorities. The movement is

not confined to the east for in Oregon we hear of complaints against "the forty-seven boards and commissions created to enforce the laws and manage the business of the state"; and we find amendments to the constitution seriously proposed which will vest in the governor control over all executive officers and the power to sweep away boards and commissions and retain only such functionaries as he deems necessary for the economical management of public business. In the place of miscellaneous commissions it is now seriously proposed that all of the administrative work should be concentrated, in the states, in the hands of a few great departments. That the movement will go so far as to abolish all commissions in favor of single-headed departments, however, is doubtful for, as we have seen, some of the commissions, such as the railway boards and civil service commissions, not only administer but give advice and make laws. Nevertheless, the law-making authority of the heads of some departments is scarcely less extensive than that of some important commissions; and thus the principle of differentiation is not so clearly drawn as might be imagined at first glance. However this may be, the history of administrative law during the next few decades promises to record a revolution in administration in the direction of single-headed departments, with the employment of the executive commission only for administrative purposes which are quasi-legislative in character.

See ADMINISTRATION IN EUROPE; BOARDS OF CONTROL, STATE; BOARDS, MUNICIPAL; COMMISSION SYSTEM OF CITY GOVERNMENT; EXAMINATIONS FOR EMPLOYMENT; EXECUTIVE AND EXECUTIVE REFORM INSTITUTIONS, STATE ADMINISTRATION OF; MAYOR; MUNICIPAL GOVERNMENT; STATE DEPARTMENTS, HEADS OF; STATE EXECUTIVE; Commissions by name.

References: P. S. Reinsch, *Readings on Am. State Government* (1911), ch. v, *Am. Legislatures and Legislative Methods* (1907), ch. v; C. A. Beard, *Am. Government and Politics* (1910), 291, 501; J. H. Finley and J. F. Sanderson, *The Am. Executive and Executive Methods* (1908), ch. xiii; F. H. White, "Growth of State Boards and Commissions" in *Pol. Sci. Quart.*, XVIII (1903), 631; A. B. Hart, *Actual Government* (rev. ed., 1910), §§ 69, 92, 134.

CHARLES A. BEARD.

COMMISSIONS ON ADMINISTRATIVE METHODS. Since 1888 four commissions have been created to examine into the administrative methods of the executive departments of the United States with a view to placing the management of the Federal Government on an efficient basis. (1) Of these inquiries the Cockrell Commission was the earliest, created by Senate resolution of March 3, 1887. The result of this commission's work was the preparation of a report in four volumes. (2) In 1893 the joint Dockery commission examined into the status of laws organizing the executive departments. Experts connected with the commission made investigations into the conditions in the departments and their recommendations were presented to Congress in the form of bills. Action in several cases was immediately taken to bring about much needed changes. (3) In 1905 the President appointed a committee of four to consider departmental methods. This was commonly called the "Keep Commission." It was composed of men who were actively engaged in the public service and the appropriation of Congress would not permit the employment of expert assistants. Unfortunately the great mass of material which the commission collected in answer to questions addressed to the various departments remains on file in a practically useless condition, as nothing save scattered reports were ever printed. (4) In 1910 the President sought by a system of departmental committees and from expert assistance to acquire a knowledge of conditions of business in the departments and also—and more important—he sought to know not how the Government was administered but what was the machinery which formed the basis for administration. It soon became apparent that departmental committees could not accomplish so great a task within a short time and a special body of experts, known as the "President's Commission on Economy and Efficiency," was chosen to carry on the investigation and make a report. Much the same method of procedure was pursued by this commission as was the case with the Keep Commission of 1905. Queries were sent to each department and the answers used as guides in more intensive study. The aim was to unify as far as practicable all branches of government business so that it might be possible to obtain an accurate and complete account of conditions. See CONGRESSIONAL GOVERNMENT; EXECUTIVE DEPARTMENTS.

References: "Report of a Committee on Methods of Business in the Executive Departments" in *Sen. Reps.*, 50 Cong., 1 Sess., No. 507 (1888), III, IV; "Inquiry into the Status of the Laws Organizing the Executive Departments" in *Sen. Reps.*, 53 Cong., 1 Sess., No. 41 (1893); "Message of the President" in *Sen. Docs.*, 59 Cong., 1 Sess., No. 162 (1905), IV; Commission on Economy and Efficiency, "Reports," 1912, 1913 in *Sen. Docs.*, 62 Cong., 2 Sess., No. 293 (1912), House Docs., 62 Cong., 3 Sess., No. 1252 (1913).

ALICE D. HANNON.

COMMISSIONS TO PUBLIC OFFICERS. A commission is a formal certificate of election or appointment to an office. In the case of appointive officers it usually issues from the appointing power, and in the case of elective officers from some representative of that department of the government which has charge

of election returns. A commission is not itself an appointment but is merely evidence of an appointment. See APPOINTMENTS TO OFFICE; PUBLIC OFFICERS. References: F. R. Mechem, *Law of Offices and Officers* (1890), 47–55; F. J. Goodnow, *Comparative Administrative Law* (1893), II, 23; Marbury *vs.* Madison (1803), 1 *Cranch* 137. L. B. E.

COMMITTEE OF THE WHOLE. This is a device for avoiding the formalities of rigid debate, used by Congress, and many of the state legislatures. The Speaker commonly calls to the chair a member of the house, and debate proceeds in the national House by five minute speeches. Amendments can be more freely offered here than in the regular House. At the end of the discussion the committee of the whole through its chairman, reports to the House the action of the committee. Votes taken in the committee of the whole are not decisive, since no action binding the House can be taken except the whole House be in regular session. See DEBATES IN LEGISLATURES; PARLIAMENTARY LAW; RULES. References: L. H. McKee, *Manual of Congr. Practice Red Book* (1892), 49, 50, 72–75; *Rules of the House of Representatives* and *Rules of the Senate;* M. P. Follett, *Speaker of the House,* (1896); A. C. Hinds, *U. S. House of Rep. Manual* (1908). A. B. H.

COMMITTEE ON CREDENTIALS. The duty of the committee on credentials is to examine the evidences of membership in a party convention and to report to an adjourned meeting of the same. In conventions for the smaller areas the temporary chairman usually appoints this committee; in the national convention each state delegation names one member of the committee. Where the machine is in full power it is thus able to unseat duly elected delegates of other factions and to place its own nominees in their seats. Usually, however, the report of the committee is fairly honest and it is accepted as a matter of routine business at the second session of the convention. See ALTERNATIVES; CONVENTION, POLITICAL; NOMINATION; PRIMARY, DIRECT. References: T. H. McKee, *National Conventions and Platforms* (1901), Appendix I; J. A. Woodburn, *Pol. Parties* (1903), 179; M. Ostrogorski, *Democracy and the Organization of Pol. Parties* (1902), II, 259, 260; A. B. Hart, *Actual Government* (1903), 94, 96. J. M.

COMMITTEE SYSTEM IN THE UNITED STATES

General Powers.—In American deliberate assemblies, when a measure is introduced, it is the practice to refer it immediately to a committee, composed of members of the body, for examination and report. The appointment and membership of committees, the rules governing procedure and the general subjects over which they have jurisdiction are subject to the rules of the body of which they are a part. A committee has full power over a bill or resolution, but may not change the title or subject; committees may meet when and where they please, but can agree to a report only when acting together; the person first named acts as chairman, and in his absence, the next named member, unless the committee shall elect its chairman. It has generally been held that a committee may not report a bill whereof the subject has not been referred to it by the body, but committees have authority to report measures relating to subjects over which they have jurisdiction. A committee may report a measure favorably, adversely, or without recommendation; or may report it with amendments; the minority may submit its views, but not a report. Standing committees are appointed by each house of Congress to have jurisdiction over general classes of legislation. The committee system has been adopted, with variations in detail, by legislative bodies generally.

Importance of Committees.—Senator George F. Hoar, in his *Autobiography,* says that the career of a member of either house of Congress is determined, except in rare cases, by his assignment to committees, and James Bryce, in his *American Commonwealth,* expresses substantially the same opinion. The fact that committees have original jurisdiction over proposed legislation gives a member of the committee large opportunities to shape, promote, retard or prevent the passage of any measure referred to that committee; hence the first object of a legislator, whether national, state or municipal, is to obtain committee assignments of a character suited to his ambitions, tastes or abilities. As a rule, the appointment of committees is entrusted by the rules to the presiding officer of the body. Such is the practice generally followed in state legislatures and city councils, and the use of committee patronage is one of the means used to promote the election of the presiding officer.

Appointment of Committees in the House of Representatives.—From the beginning of this government until 1911, the appointment of committees of the national House of Representatives was lodged in the Speaker. In 1910, as the culmination of a revolt against Speaker Cannon (who had held office longer than any previous Speaker), the House legislated out of office its committee on rules, having charge of

the order of business; and elected a new committee, from which the Speaker was excluded. It was alleged that, by reason of his authority to appoint committees, his chairmanship of the committee on rules, and his right of recognition of members entitled to the floor, the Speaker had become the virtual dictator of all legislation, and the maker of political policies. It is certain that the Speaker had become a power of first importance, who could, and often did, successfully make use of legislative machinery to oppose the policy of the President (*see* RULES OF CONGRESS; SPEAKER). In obtaining a majority, in 1911, the Democrats enlarged the committee on rules from five members to eleven, and expressly excluded the Speaker therefrom. The power to elect committees was assumed by the House; and rules were adopted to limit the jurisdiction of committees over measures referred to them (*see* INSURGENTS; RULES OF CONGRESS).

Method of Selecting House Committees.—The present method (1913) of selecting House committees is this: The majority and the minority in their respective caucuses elect members of the committee on ways and means; these two sections of that committee, acting separately, arrange the majority and minority membership of the standing committees, according to the proportional representation fixed by the majority. The lists are then reported to the respective caucuses for confirmation, and afterwards to the House for election. Vacancies are filled in the same manner. The House has (1913) 56 committees, varying in membership from three to 22 members. The committees on rules, elections, ways and means, the committees handling appropriation bills, and certain others, have leave to report at any time, and this right carries with it the immediate consideration of the bill reported. Bills of a public character directly or indirectly appropriating money or property, when reported, are placed on the Union calendar; other public bills go to the House calendar, and bills of a private nature are referred to the calendar of the committee of the whole (*see* CALENDAR OF LEGISLATIVE BODIES).

Discharge of Committees.—In 1911, also, the House established the "calendar of motions to discharge committees." After a bill has been in committee 15 days, a motion to discharge the committee from further consideration of the measure can be filed by any member of the House. Seven days after filing, the motion to discharge can be called up; and the bill, after being read by title, will be placed on the appropriate calendar, provided a majority of those voting so deeide; otherwise the bill remains in committee. The object of this change is to prevent pigeon-holing bills by committees; but whether the machinery devised will prove effective to produce the desired result, or whether committees will have the power to place themselves beyond the reach of such motions is a question, for it is always the aim of a portion of the body to prevent legislation by the resort to parliamentary tactics.

The effect of the radical changes made by the House cannot be foreseen; nor is it certain that the transfer of power from the Speaker to the chairman of the committee on ways and means is anything more than one stage in the struggle now in progress throughout the country to prevent the concentration of power in the hands of a few individuals, whether in politics or in business. The French proverb that the king grants only what the people wrest from him is as true in democracies as in monarchies. At times when no predominant issues are at stake, the tendency is to seize upon the machinery of government to promote a multitude of small and often selfish ends; and the good effects of any radical change in the machinery endure only until new methods have been discovered to reach old results. So long as the struggle against intolerable conditions continues, the results are apt to be beneficial. For the time being, at least, the majority of the House has acquired the power which had been concentrated in the Speaker; but by degrading its presiding officer, it has probably placed more power in the hands of the President. It remains to be seen how far the House as a deliberative body will be able to utilize the power it has sought to acquire.

Senate Committees.—In the Senate, the standing committees were first appointed in 1816. Before that date the custom was to refer to select committees various portions of the President's message, and these select committees became practically standing committees. Originally the committees consisted of three members; in 1853 the number was increased to six; in 1873 the limit was raised to nine, and in 1913 the largest committee was composed of 18 members. From the beginning, the committees have been elected, save at several sessions between 1826 and 1839 when the president of the Senate was authorized to appoint committees. The fact that the president of the Senate is not a member of that body is the reason why the practice of the Senate in the past has differed from that of the House. The rule now provides for the election of committees, but the practice is to suspend the rule and choose the committees by resolution, which is virtually an election.

The method of selection which has prevailed for many years is this: the members of the majority and those of the minority meet in caucus; and the chairman of each caucus is empowered to appoint a committee on committees. The committee representing the majority reports back to the caucus the chairman and majority members of each standing committee. This report carries with it the number of the standing committees for the Congress, the number of members on each committee, and the relative proportion of majority and minor-

ity members. The minority caucus committee likewise fills the places allotted to the minority. The two lists are submitted to the respective caucuses and, when approved, are combined and reported to the Senate in a single resolution.

Precedents of the Senate.—The assignment of members to committees is controlled by certain precedents. A Senator once appointed chairman or a member of any committee may not be dropped without his consent, so long as his political party is in the majority. Chairmanships are assigned by seniority in committee service. Twice the precedents have been broken—in 1859, when Stephen A. Douglas was deposed from the chairmanship of the committee on territories, because he differed from President Buchanan on the Lecompton issue; and again in 1871, when Charles Sumner was removed from the chairmanship of foreign relations, because he opposed President Grant's policy of annexing San Domingo. Vacancies on committees are filled in accordance with senatorial seniority. Thus a newly elected Senator may better his committee assignments as he grows older in service, and as a rule a Senator during his second term attains the committee assignments he desires, although he may have to wait much longer for a coveted chairmanship.

The fact that the senatorial term covers a period of three Congresses, together with the custom which prevails in many of the older states of reëlecting their Senators, makes the chairmanship of the leading committees places of great influence and power. On questions of public policy, the President is accustomed to advise with the Senate chairmen more effectively than with the members of his Cabinet, and while from time to time Senators have accepted Cabinet appointments, as a rule the change has been made rather from a sense of duty than from inclination.

The work of the Senate is divided among 73 committees, the practice being to give to each Senator in the majority and to a number of the senior Senators in the minority the chairmanship of a committee; if there are not enough committees to serve this purpose, new ones are created. There are Senate committees which never are called together; but each committee has a clerk, who acts as private secretary to the chairman; and a room, which is also the Senator's private office. The important committees have several clerks and a messenger; and the amount of work done by them more than balances the inactivity of the unimportant committees, to the chairmanship of which the newer Senators are assigned. It is a question, however, whether the multiplication of committees does not detract from the dignity of the Senate.

Evolution of Congressional Committees.—The province of a committee is to shape proposed legislation and report it to the legislative body for discussion and action. In Congress, all estimates of appropriations from the executive departments are transmitted through the Secretary of the Treasury to the Speaker of the House, and by him referred to the respective committees. Originally, the ways and means committee of the House considered both the revenue and the appropriations; but in 1865 the appropriations bills were given to a new committee, and certain other bills to the committee on banking and currency, the ways and means committee retaining bills relating to the revenue and the bonded debt. The chairmanship of ways and means carries with it the floor-leadership (*see* LEADER OF THE HOUSE). In 1885 a number of the departmental supply bills were distributed among the appropriate committees. A similar evolution has taken place in the Senate. Bills introduced by members are referred directly to committees. After a bill has been received by a committee, it is docketed by the committee clerk, and is assigned by the chairman to a sub-committee of one or more members. Bills relating to a subject over which one of the executive departments has jurisdiction are referred to the head of the department for information and advice.

Medium for Obtaining Information.—The chief function of the committee is to obtain all possible information on the subject under consideration. Both Cabinet members and subordinate officials appear before congressional committees, and by means of hearings, any citizen or body of citizens make known their opinions either for or against pending legislation. A committee may send for persons or papers; or it may take testimony in any portion of the country, subject to certain limitations as to the payment of expenses. It may be authorized to employ experts to investigate special subjects. The testimony taken at these hearings and the reports of experts are printed for the use of the committee, and usually are accessible to the public. The conduct of public servants may be inquired into, or a subject of general concern may be investigated. In short, the committee forms the intermediary between the legislative body and the citizens, and as such, its importance cannot be over estimated.

Committee Reports.—Committee reports are made to the body by the chairman or by the member to whom the bill is assigned. The original bill is reported, together with such amendments as may be agreed upon in committee; and in Congress a written report containing argument or information is furnished. The bill then is placed on the calendar and is ready for action in its turn (*see* REPORTS OF COMMITTEES).

Committee of the Whole.—The committee of the whole (*see*) house is a device for the informal consideration of a measure that has been reported from a committee. In forming a committee of the whole, the permanent presiding officer leaves the chair, after appoint-

ing a chairman; the bill is read, and amendments, both those proposed by the committee reporting the bill and those offered from the floor, are considered. Debate is general and a member may speak practically as often as he pleases, subject to any orders that may be made for closing debate. When debate has closed and all amendments have been voted upon, the committee arises, the permanent presiding officer resumes the chair, and the chairman reports the amendments made in committee, together with the committee's recommendation as to whether the bill should or should not pass. The motion then is on concurrence in the recommendation. In the United States Senate only the form of going into committee of the whole continues. The presiding officer retains the chair, and, when debate ceases, he merely states that, the bill having been considered as in committee of the whole, is in the Senate and is open to amendment.

Conference Committees.—When there is disagreement between the two chambers as to the details of a measure that has passed both, a committee of conference is appointed from among the members of the respective committees having original charge of the bill. The members from each chamber vote as a unit. If they reach no agreement, the conference committee of the chamber in which the bill originated reports the fact. That chamber may vote to recede from its disagreement to the amendments of the other, in which event the bill passes; or to insist on its disagreement and to send the bill back to conference; or the chamber making the amendments may vote to recede and allow the bill to be enacted in the shape it passed the first chamber. In the event of ultimate disagreement in conference the bill fails; but it may be sent back to a new conference. A conference committee may report modifications of the amendments made by either chamber, and in practice this often happens, but in theory no new provisions may be inserted in a legislative measure by a conference committee.

Joint Committees.—Joint committees are appointed either as standing or as select committees to consider subjects on which united action is desirable, or to exercise concurrent jurisdiction of an executive character. For example, Congress maintains standing joint committees on the library (which deals also with statuary, pictures, the botanic garden and the Smithsonian Institution); on printing, including administrative functions in connection with the Government Printing Office; and on several other subjects relating to the joint action of the two houses.

Select Committees.—Select committees are appointed to make special investigations, to consider particular subjects not falling into the usual legislative categories, to take charge of celebrations or the like. Often these are joint committees.

The Committee System in Congressional Government.—The development of the committee system to the point it has reached today is an evolution brought about primarily by the increased and increasing number of points at which the Federal Government touches the community and the individual. In the early days of the republic, congressional action was concerned chiefly with subjects brought to the attention of Congress in communications from the President. Originally Senators, as representing the states, had the right to introduce measures; but in the House legislation originated in committees, to whom subjects were referred. To-day the average number of bills introduced by a Senator in a single Congress is upwards of 120, and the average for a Representative is more than 55. A large proportion of these measures are special pension bills and other private measures; and the appropriate committees deal with them, first by reference of the individual bill to the executive officers for examination and report, and then, unless the report is adverse, favorable action depends almost entirely on the amount of time at the disposal of the respective legislative bodies, the passage of pension bills, especially, being largely mechanical. Of the 6,000 bills introduced in the Senate and the 22,000 offered in the House, a comparatively small number are enacted during the Congress in which they are first introduced, largely because of lack of time for consideration in committee. Besides private bills, there are large numbers of measures affecting the interests of particular sections, such as bills in relation to mining, bridging navigable waters, the construction of public buildings, changes in the names of vessels, forest reserves and the like. Then there are the bills which, although nominally fathered by an individual member, usually have their origin in the report or the estimates of an executive department; and not infrequently bills are introduced at the request of a constituent and are left to take their chances in committee. Each of the important committees, however, settles upon a policy with regard to different classes of bills, so that measures reported by it conform in the main to certain standards. In this manner each committee becomes a miniature legislature, the methods of which are known to the larger body and the resulting bills are usually accepted, but sometimes are rejected.

In the preparation of appropriation bills, the committees have the advantage of the reports and estimates prepared by the various departments and revised by the Secretary of the Treasury. In each house of Congress the chairman of the committee on appropriations assumes a limited responsibility in keeping the sum total of expenditures within the estimated revenues; but the fact that the appropriation bills, both in the Senate and in the House, are distributed among a number of committees

prevents effective control of expenditures. The tendency of Congress is best illustrated by the course of the appropriations for 1910–11, when the estimates of the Secretary of the Treasury called for an expenditure of 847 millions (*see* ESTIMATES); the House committees added 3 millions; but the house itself reduced the increase over the estimates to $600,000; thereupon the Senate committees made an addition of 18 millions and the Senate added another million; and the resulting legislation brought the total increase over the estimates up to 13 millions. The only important changes in the estimates submitted by the Secretary of the Treasury were in the increased appropriations for the navy and for rivers and harbors and a decrease in the appropriation for sundry civil expenses. As a rule Congress follows the estimates of the Treasury Department, except where public sentiment creates demands to which the legislative department yields.

Defects and Merits.—The committee system gives an opportunity for members who, either by themselves or through their constituents, are interested in a particular class of subjects (such for example as public lands, Indian affairs or mining) to obtain control of the committees handling all legislation pertaining thereto. Only a small proportion of the members being interested in any one of these special subjects, the body itself has neither the knowledge nor the desire to compel legislation against these special interests. Again, while the hearings before committees are open, committee meetings never are; thus in effect legislation is shaped in secret session and the public is without information as to the arguments on which committee action is based. Moreover, where political lines are drawn the majority and minority members of a committee may hold separate sessions, and the resulting reports represent not the result of free discussion, but merely the determination of the majority to effect particular legislation. The committee system, in reality, divides the legislative body into smaller bodies which act more or less independently and therefor without coherence and without full participation in a general plan of legislation or appropriation.

On the other hand, the committee system has grown out of the need of finding some fairly expeditious method of conducting public business. The great bulk of legislation is of a purely business character, and is best handled without formal discussion. The opportunity which the committee affords to bring public opinion, and especially expert opinion, to bear on legislation is of great advantage in the conduct of affairs so diverse and often so local in character as to make it impossible for members of a committee to act in other than a quasi-judicial capacity. Any comparisons that might be drawn from the practice or procedure in other countries, where a responsible government stands or falls by the result of certain measures which it has brought in, are apt to be misleading. While far from perfect, the committee system has the great advantage of bringing the individual citizen in immediate contact with the men who have charge of the legislation in which he personally is interested. Moreover, matters of first importance are usually subject to the direction of the caucus (*see*) of the majority; so that while the checks to legislation are less sharply defined than are those applied in countries where the ministerial system prevails, still such checks do exist, and in the majority of cases are effective.

Committees in State Legislatures.—In state legislatures, the committees are appointed by the presiding officers, except in Connecticut, Vermont and Illinois where the senate elects its committees. The proceedings of committees for the most part follow congressional precedents; but in general it may be said that the scrutiny of bills in committees of the whole and in the formal consideration of measures by the respective houses in legislatures is more careful than in Congress on the one hand and in common councils on the other; and therefore the power of the legislative committee is correspondingly less. The desire of members to serve on important committees is so strong as to lead to a general enlargement in the membership throughout state legislatures; and much of the discussion formerly held in the chambers is transferred to large committees. Where necessity for careful scrutiny of a bill is desirable a sub-committee is appointed by the chairman. Public sentiment, or the necessity for a particular reform, gives importance now to one committee and again to another. While the organization and control of committees is of first importance to interests seeking either to promote or to defeat proposed legislation, and while the committee is the fertile field for the lobbyist, still the great majority of measures introduced and work done is directed towards proper ends; and the amount of corruption in legislative proceedings is comparatively small. The members who can be influenced by money considerations are usually well known, and are treated accordingly. The evil of hasty and ill-considered legislation towards the end of a session is prevalent; and the power exerted by the committee on order of business is large. Joint standing committees are used to advantage in the New England states, for expediting business. The practice of using legislative committees to investigate abuses has been attended by notable results in New York, Massachusetts, Illinois, and some other states, notwithstanding the disposition of the courts to confine within narrow limits the powers of such committees.

Committees in City Government.—In the legislative branch of city governments the committee plays an all-important point. The committee assignments are used by candidates for presiding officer as the means of making com-

binations to secure election. The public service corporations have a direct and powerful interest in arranging the committees and in the results of their deliberations. As a rule a unanimous report from a committee, whether favorable or adverse, is followed by the body. Where a committee is divided the contest is transferred to the chamber. Various expedients are constantly being devised to overcome the forces in city affairs which make for evil or for private gain; but no machinery has yet been devised which ensures such results beyond the life of the public interest which calls the particular device into being. The chief service performed by the committee is the facility it affords private citizens or semi-public bodies to present their views. The organization of boards of trade, citizens associations, and like bodies, which, through their committees, study civic conditions and bring the results of their findings to council committees, is proving the most effective force for good in city government today.

See BILLS, COURSE OF; CABINET GOVERNMENT, THEORY OF; CONGRESS; CONGRESSIONAL GOVERNMENT; DRAFTING OF LEGISLATION; HOUSE OF REPRESENTATIVES; REPRESENTATIVES; REPORTS OF COMMITTEES; RULES; SENATE; SENATORS; SPEAKER IN STATE LEGISLATURES.

References: J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, chs. xiii, xv; S. W. McCall, *The Business of Congress* (1911), chs. iii, v; A. C. Hinds, *Precedents of the House of Representatives* (1907–8), chs. x, xi; House of Representatives, *Rules;* United States Senate, *Manual*; G. E. Furber, *Precedents Relating to the Privileges of the U. S. Senate* (1893); G. F. Hoar, *Autobiography of Seventy Years* (1903), I. ch. xviii; P. S. Reinsch, *American Legislatures* (1907), ch. v; A. L. Lowell, *Government of England* (1908), I, ch. xiii; L. G. McConachie. *Congressional Committees* (1898); H. J. Ford, *Cost of Our National Government* (1910).

CHARLES MOORE.

COMMITTEES IN EUROPEAN LEGISLATIVE BODIES. The committee system of continental legislative chambers is best exemplified in the French Assembly. Every month the members of each of the French houses are divided by lot into sections called *bureaux*, usually nine in the Senate and ten or eleven in the Chamber of Deputies. Theoretically these *bureaux*, each with its president and secretary, discuss separately bills introduced into the respective houses. In fact, their discussion is perfunctory, serving merely to disclose the general attitude of members. Real preliminary discussion of proposed bills takes place in the committees proper (*commissions*), the selection of which forms the principal business of the *bureaux*. A *commission* may be named by the house itself, but it is usually composed of members of whom an equal number is elected by each of the *bureaux*. Formerly these *commissions* were special and temporary, dealing with particular questions and straightway dissolved. In the Senate this earlier practice is still largely followed, and may be followed at any time in either house. But the tendency, especially in the chamber, is toward permanent or standing committees, numbering about sixteen, made up of three members from every *bureau* and chosen at the opening of every legislature. The budget or finance committee of the chamber is chosen annually, likewise by the *bureaux*. Every *commission* elects its president and secretary and also a reporter who draws up the results of its deliberations. Thus constituted, the *commissions* prepare measures for debate, amendment and vote in the house. With some modifications, this system of legislative committees exists in all the principal continental states. In the English House of Commons, on the other hand, important public bills are framed and introduced by the government and never considered in committee, properly so-called, at all. Standing and select committees, to consider non-contentious and private measures, are appointed by the committee of selection, itself an impartial body chosen by the House at the beginning of the session, which seeks to make these committees represent fairly the sentiment of the House.

Supporters of the continental method of selecting committees claim that it tends to preserve minority rights, inasmuch as some minority members are usually named by the *bureaux*. There is undoubtedly force in this argument. Moreover, some method of securing consideration of minority views is especially desirable in a state without any real constitutional guaranty of individual or minority rights, in the American sense of the term. But the scheme has great disadvantages. The members of the *commissions*, chosen on personal grounds, often neither represent the sentiment of the ministry nor yield to its direction. The cabinet thus finds itself powerless in framing legislation, for which it must bear responsibility. Such a situation is inconsistent with real parliamentary government. Furthermore, the *commissions* do not always reflect the sentiment of the chamber, which frequently rejects their measures and adopts hasty patchwork instead. If the continental method of choosing *commissions* is to stand, the *bureaux* must seek to make them representative of the chamber, and, if possible, representative of the ministry as well.

See COMMITTEE SYSTEM IN THE UNITED STATES; LEGISLATION, BRITISH SYSTEM OF; LEGISLATIVE SYSTEM IN EUROPE; PARTY SYSTEM IN EUROPE.

References: A. L. Lowell, *Governments and Parties in Continental Europe* (1896), I, 111–117, 207–210, 255, 265–7, 300, 301, II, 89 n. 4, 5, 142 n. 3), *The Government of England*

(1908), I, 319–325; L. Duguit, *Manuel de Droit Public Francais, Droit Constitutionnel* (1907), 882–889. HENRY A. YEOMANS.

COMMITTEES OF CORRESPONDENCE. Samuel Adams's sense for political manipulation was quick to detect the advantage possessed by the royal government in the prerevolutionary struggle. While the Massachusetts governor and the popular assembly were disputing the theoretic rights of the colonists, Adams devised the "committees of correspondence" to keep the other towns of Massachusetts informed of the debate going on in Boston. The resolution of the town meeting was that "a Committee of Correspondence be appointed to consist of twenty-one persons . . . . . to communicate and publish (the rights of the colonists) to the several Towns in this Province. . . . . . Also requesting of each Town a free communication of their Sentiments on this Subject." Those in the other towns who were sympathetic did form similar committees, and this Massachusetts model was imitated by other colonies. The next step was taken when (March 1773) Virginia appointed a committee of correspondence to keep Virginia informed concerning the work of the Gaspee Commission. This committee corresponded with similar committees in other colonies, and thus formed an inter-colonial system of committees. These organizations spread the revolutionary spirit, set war itself in motion and at last served in some cases as the embryos of new governments. See REVOLUTION, AMERICAN, CAUSES OF. **References:** V. L. Collins "Committees of Correspondence" in Am. Hist. Assoc., *Annual Report*, 1901, I, 247; G. E. Howard, *Preliminaries of the Revolution* (1905), 255–258. C. H. VAN T.

COMMITTEES OF SAFETY. When, in the early days of the American Revolution, after the flight of the royal governors, the provincial congresses, conventions, or revolutionary assemblies took up the task of governing in the several colonies, there was no executive branch of this temporary government, and committees, made up of members of the assemblies, were formed to administer the decrees of these revolutionary legislatures. These became known as "committees of safety." In the several towns and districts throughout the colony similar local committees, chosen by the local Whigs (*see*), were set up. An unfriendly Loyalist's description asserts that the country was "cantoned out into new districts and subjected to the jurisdiction of these committees, who, not only without any known law, but directly in the teeth of all law whatever, issue citations, sit in judgment, and inflict pains and penalties on all whom they are pleased to consider as delinquents." These committees enforced the decrees of the first Continental Congress as to the American Association (*see* ASSOCIATION), and later had great powers in directing military defense in many localities. The state committees often wielded all political power during the interims of the sittings of the provincial assembly. **See** REVOLUTION, AMERICAN, CAUSES OF; STATE GOVERNMENTS DURING THE REVOLUTION. **Reference:** A. Hunt, *Provincial Committees of Safety* (1904). C. H. VAN T.

COMMITTEES, PARTY

General Functions.—Permanent party organization is maintained throughout the nation by means of party committees. They guard and foster party interests, not only during the campaign periods but also throughout the intervals between conventions and elections; they collect information valuable to party leaders; they help to determine party principles, control or make sentiment and give currency to party opinion.

The National Committee.—Most important of these organizations is the national committee, the real head of the party machine. While the President is the nominal head of his party, the chairman of the national committee, chosen by the presidential candidate and in close touch with him, is both nominally and actually the head of the organization. He is a national figure; his position has grown in importance with the increasing power of the national committee and the recognition of the party as an organ of government. In the Democratic party the permanent national committee has continued since 1848. The first national Republican nominating convention, that of 1856, was called by a self-appointed committee representing nine states. It promptly passed a resolution providing for the appointment of a national committee consisting of one member from each state and territory to serve during the ensuing four years. Evidently such a committee had become, even then, recognized as the natural form for permanent organization.

One member of the committee is named by the delegation of each state and territory in the convention. Care is taken that the committee shall be acceptable to the candidates for President and Vice-President, whose election is the first and perhaps the chief object of its labors. This does not mean that the committee shall be entirely of the faction whose candidate has been successful—such a selection would be most unwise—but it must be ready

for united action and to assist in harmonizing the party under the leadership of the accepted standard-bearers. Except for resignation or removal for cause, the term of the committeeman is four years or until the next national convention.

After the close of the convention the new committee proceeds at once to organize and prepare for the strenuous duties of the campaign. It selects a chairman, a secretary and a treasurer, none of whom need necessarily be original members. The chairman, as has been said, is the nominee of the presidential candidate and in close touch with him. His position is not unlike that of the general in an army. He must understand the political situation in all parts of the country, must be thoroughly familiar with popular feeling and be able to manage his forces in such a way as to make them most effective in all emergencies. His success depends not a little on the skill and zeal of his staff of lieutenants. Although in position subordinate to the chairman, the secretary of the national committee is most important. While the chairman is appearing on the firing line wherever the danger is greatest, the secretary must conduct the business of the national headquarters and must keep all the details of the campaign at his fingers' ends. The treasurer is chosen for his ability as a financier and as a solicitor of funds. He must collect and expend the vast sums of money necessary to the running of so complex and extensive a machine and must be able to convince men and corporations controlling large capital that their interests are identical with those of his party. In any campaign, thorough organization is the prime requisite. The national committee is, therefore, subdivided into the following main committees. The executive committee, with the general chairman at its head, is the chief sub-division. There is also a finance committee, a committee on a bureau of speakers, one in charge of litterature and press matter, and another to superintend the distribution of public documents.

While not organically connected with the various state and local committees, the national committee does, in effect, direct the campaign in every state, county, city and village. Through its state member the central organ is advised of the condition of party and factional feeling within the state and can adjust its forces to meet the particular situation. In doubtful states one of the most laborious duties of the agents for the national committee is the polling of the party vote; and so carefully and thoroughly is this done that the secretary knows almost to a man the attitude of the party constituency and can direct his campaign accordingly.

The "Off Years."—From the time of its organization until the last feverish hour of the struggle the national committee is in the lime light. But the suddenness with which it then disappears from view is no indication of any real cessation of its duties. The responsibilities of its members during the three "off years" may not be so heavy as at first, but they are of that wearing kind which rest upon the watchman and the peacemaker. If the party has no representatives in Congress the party committeeman for the state is instrumental in distributing party patronage to his constituents. Each member of the committee is expected to act as a thermometer constantly testing the ardor of party feeling and the causes of dissension or discord and disaffection in his section. The committee can also perform valuable service for the President and congressmen in making them acquainted with the feeling of the rank and file of the party.

When the three years of this valuable training are past the national committee comes once more to public notice in its issue of a call for the next national convention of the party. All the preliminary arrangements for this assembly are in its hands. It hears and weighs the arguments of the various delegations seeking to "land the convention" in their own cities. In its hands lies, also, the important decision as to what are the natural constituents of the party to which the call is issued. It arranges for tickets, seating of delegates, the preliminary roll made up from the returns sent in, etc. Most important of all, the national committee selects the temporary chairman of the convention, whose address is expected to sound the key-note of the harmonies to follow. Although its selection is not forced upon the convention, only twice has it been set aside—in the Republican convention of 1884 and in the Democratic convention of 1896. On both of these occasions abnormal divisions existed in the party. With the opening of the convention, the national committee is dissolved to give place to this supreme organ of the party by which is appointed a new national committee in harmony with the new candidate for the presidency. The chairman of the retiring committee, however, is considered as being in office until the new committee is organized.

The Congressional Committee.—One other national committee has developed in our party system, the national congressional committee or the congressional campaign committee. Its origin dates back to the struggle between Andrew Johnson and his Republican Congress. To replace the national committee, which was, of course, closely associated with the executive, the House of Representatives organized a national congressional committee to manage the congressional campaign of 1866. In both parties this has become a permanent part of the extra-legal machinery. The congressional committee differs in organization in the two parties. The Republican committee is chosen in a joint caucus of the members of the two houses, each state or territory represented in

Congress naming one member. If a state has but one representative in either house that man becomes a member of the committee. If the state or territory has no Republican representative in Congress, it has no representation on the national congressional committee. There is no rule that some of the committee shall be Senators, though, as a matter of fact, some Senators are always chosen. In adopting the national congressional committee, the Democratic party has made some important changes in its composition. Members of the committee are named in separate caucuses of the two houses. Nine members are appointed by the Senate and one member is named for each state and territory represented in the House. If a state or territory is unrepresented in the House, a prominent Democrat of that commonwealth is named for membership on the committee. Obviously this is a much larger and more representative committee than that of the Republican party.

The national congressional committee renders general party service in addition to its main business of returning a good majority for the party. During the first year of an administration controverted questions of policy and even entirely new issues often arise. Such, for instance, was the case in McKinley's administration. At that time the Spanish American War created an entirely unexpected situation which the congressional committee met in its campaign text book. It was the first to formulate a party foreign policy which has shaped party opinion ever since. The text book for a mid-term campaign takes the place of a platform and is the official creed of its party. It crystalizes party ideas. The national congressional committee has supreme control of the campaign in a mid-term election when the returning of a House favorable to the administration is accepted as an endorsement of the party which has previously elected an executive. Through the congressional district organization the committee reaches down to the local area and the individual voter just as the national committee does in other years. It touches the smallest voting precincts. The policy of the Democratic congressional committee has been to keep in close connection with the national committee and to endeavor to increase party strength in all parts of the country. The Republican policy has been rather to work in the few doubtful areas and thus to strengthen the party in Congress. Although the committee is made up of both Senators and Representatives, it is in much closer connection with the lower house.

State Committees.—Subordinate to the national committees the parties in each state have their state central, or state executive committees with a varying series of committees for the lesser areas. In a general way the machinery of the party corresponds to the machinery of local government within the state. In New England, for example, the town fills the most important place. In the South the county is the chief local unit. In states where the local government is divided between county, township and village, the party has corresponding organization. Even more than the states vary in their local government do the party machines within the states differ. Outside of New England, however, the county committee holds an almost uniformly importtant place in party organization. Judicial, senatorial and congressional districts as well as the school district and city ward, or precinct, may all be siezed as bases for party work. In a general way it may be said that the two parties in the same state resemble each other more closely than do the organs of the same party in various states. The work of the state machine, its elaboration and effectiveness, also depend largely on the habitual strength of the party vote. A safe Republican or Democratic state, like Pennsylvania or a southern state, will have a strong machine for the dominant party. In doubtful states, like Indiana, the most thorough organization of both parties will be found (*see* PARTY SYSTEM IN DOUBTFUL STATES; PARTY SYSTEM IN SURE STATES).

The state central, or state executive committee, may be composed of representatives of congressional districts, of state senatorial districts and of counties, or it may be named by the chief candidates of the party. It may be large, as in Pennsylvania, where it has over a hundred members; or it may be small, as in Indiana, where it has but thirteen. In the former case the campaign is really conducted by the chairman; in the latter case the state committee as a whole is in charge. (For detailed discussion *see* PARTY ORGANIZATION IN CALIFORNIA, MASSACHUSETTS, PENNSYLVANIA and the SOUTH).

City Committees.—In the great cities party committees are most important and highly organized (*see* TAMMANY). Their duties are to look after the vote in their respective cities and to care for the interests of the party they represent.

See CAMPAIGNS, POLITICAL; CONVENTION, POLITICAL; FINANCE; ORGANIZATION; PARTY, PLACE AND SIGNIFICANCE OF.

References: J. A. Woodburn, *Political Parties and Party Problems in the U. S.* (1903), 197–294; J. Macy, *Party Organization and Machinery* (1904), 65–96; M. Ostrogorski, *Democracy and the Organization of Political Parties* (1902), II, 211–213, 280–286; A. B. Hart, *Actual Government* (1903), 90–91; R. Ogden, "New Powers of the National Committee" in *Atlantic Monthly*, LXXXIX (1902), 76–81; C. L. Jones, *Readings on Parties and Elections* (1912), 188–204. JESSE MACY.

COMMON CARRIER. One who, by virtue of his calling, undertakes to transport persons or goods, for all who may choose to employ him

and pay his charges. The term is sometimes used to include those who regularly and as a matter of business convey messages. See TRANSPORTATION, REGULATION OF.

H. M. B.

COMMON COUNCIL. The legislative body of the city was formerly called or known as the common council. The term is still used, as in Philadelphia, where one branch is known as the select council and the other as the common council, but the general term now used is city or municipal council. (See COUNCIL, MUNICIPAL). H. E. F.

COMMON LANDS. According to Webster this phrase means an inclosed or uninclosed tract of ground for pleasure, for pasturage, etc., the use of which belongs to the public or to a number of persons. In the United States this form of tenure originated during the colonial period. In New England it was customary for the colony to grant townships of land to certain designated individuals or the members of an incorporated community, who became known as proprietors. After the first allotment of land was made the unappropriated residue was known as common land and was subject to division by vote of the proprietors or their descendents. Commons for public enjoyment, as parks, training grounds, etc., were at times established. Commons may be dissolved by vote of the proprietors or by judicial proceedings. No common lands were created under the federal land system, although such lands held under former foreign grants were confirmed in Illinois and Missouri. The old English rights of common, such as pasture, piscary, turbary and estovers, are practically unknown in America, though there are a few undivided rights in former common lands on Cape Cod. See REAL ESTATE, PUBLIC OWNERSHIP OF. References: W. B. Weeden, *Econ. and Soc. Hist. of New England, 1620–1784* (1894), I, 55–64. P. J. T.

COMMON LAW. See LAW, COMMON.

COMMON PLEAS, COURT OF. See COURT OF COMMON PLEAS.

COMMON SCHOOLS. See SCHOOLS, GRAMMAR, AND THE GRADES.

COMMUNISM. Communism differs from socialism in several particulars. First, communism means common property in practically everything, consumers' goods as well as agents of production, whereas socialism proposes common or public ownership only in the latter. Second, communism would practically eliminate all forms of competition within the group by reason of the equality of the common life. Where all share alike as consumers in the common products of community industry, and no one can be any better off economically than any one else, there could scarcely be anything left which could be called competition. But, under socialism, where there is no common consumption or common life, but only common ownership of the tools of production, with private incomes and private consumption, there is ample room for rivalry and competition. Third, communism is almost necessarily a thing of small units whereas socialism aims to be at least nation-wide, if not world-wide. Some of the early communists, however, had visions of a world-wide communism, but it consisted of a world-wide series of small communities each having a common life of its own.

Though communism appears, from some points of view, to be the exact antithesis of anarchism, the last named characteristic shows that, at this point, the extremes meet and have very much in common. In fact the leading school of anarchists call themselves Anarchist-Communists. Communists, as well as the philosophical anarchists, deprecate the use of physical force by government and depend upon good will and voluntary agreements among men. This is an ideal which has appealed powerfully to religious minds in all ages, especially since the rise of Christianity. It was but natural, therefore, that a great many experiments in practical communism should be tried, but the philosophical anarchists have not shown quite so much faith in their principles.

Among the experiments in practical communism it is common to name the Apostolic Church and the monastic orders. The former, however, was living, for a time, in momentary expectation of the second coming and the end of the world. There is no evidence that it regarded communism as a superior form of social life, for it does not seem to have practiced it after the hope of the immediate return of Christ began to lose its first eagerness. As to the monastic orders, though they were communistic, they were also celibate, and, on that account, could scarcely serve as models for the rest of the world. Every great religious revival, however, has produced its crop of communistic experiments, such as the Taborite movement following the Hussite reformation in Bohemia, and the Anabaptists in Germany following the Luthern reformation.

As was to have been expected, America was a favorite field for the trying of such experiments, partly because of the opportunities in a new country, and partly because so many of the early settlers were religious refugees from the old world. Most of these communistic societies were direct importations from Europe, mainly from Germany, the only conspicuous communities originating on American soil being the Shakers, the Perfectionists of Oneida, and, in recent years, the Dowieites of Zion City. Among the larger communistic societies transplanted from Europe to America

may be enumerated the Rappites or the Harmonists, of Economy, Pennsylvania, the Separatists of Zoar, Ohio, the Amana Society of Iowa, all from Germany; the Bishop Hill Colony, of Illinois, from Sweden, and the Hutterische Bruderhof of South Dakota directly from Russia but originally from Germany. The only non-religious communistic society to survive for a generation was the Icarian community, near Corning, Iowa, a French colony made up of the followers of Etienne Cobet, the author of *Voyage en Icarie.* Perhaps the best known experiment of this kind, though its existence was of very short duration, was the Brook Farm community, of West Roxbury, Massachusetts. Next in fame comes Robert Owen's colony at New Harmony, Indiana, probably the most spectacular failure of all.

The experience of all these societies may be briefly summarized. With the exception of Icaria, not a single non-religious community lasted a decade, and most of them died within a year. Of the religious communities, most of them lasted until the original generation had passed away and a new generation had arisen which lacked the faith and fervor of the fathers. Then they, too, began to disintegrate. The Shakers are dwindling, the Rappites have practically disappeared, the Separatists of Zoar and the Perfectionists of Oneida have given up communism. Only the Amana Society and the Hutterische Bruderhof, among the larger communities, remain.

See Anarchy; Property, Theory of; Socialism; State Socialism.

References: L. Gronlund, *A Coöperative Commonwealth* (4th ed., 1884); E. Bellamy, *Looking Backward, 2000–1887* (1888); W. Morris, *News from Nowhere, or an Epoch of Rest* (1890); H. G. Wells, *A Modern Utopia* (1907); C. Nordhoff, *The Communistic Societies of the U. S.* (1875); W. A. Hinds, *Am. Communities* (1908). T. N. Carver.

COMPACTS BETWEEN STATES. See States, Compacts Between.

COMPETITION. Competition, as an economic conception, has been variously defined. Probably most writers would agree that it is the free action of individual self-interest—the individual being in fair rivalry with some other individual or group of individuals. As generally understood this carries with it the implication that each individual of sound mind and mature age knows his own self-interest and will, if left to himself, follow it.

By not a few, competition has been held to be a "natural law," a "law of God," an "inevitable law of life." Others, while avoiding such issues, would hold that unfettered or "free" competition is the best way to secure from each individual the greatest service to society, the best way to promote the good of all. To them it is the "law of trade," the "secret of progress," and they cannot see what could be safely substituted for it. Others, while not denying that competition is, or at least has been, a law of trade and a cause of progress, contend that it is not to-day the only one and that its working is attended with quite unnecessary evils, suffering and delay to progress. They expect to see it supplanted by some other means—generally that of conscious coöperation through governmental agencies. There are innumerable variations and combinations of these three schools.

Without attempting to enter into the merits of the controversy it is to be said that most economists have either tacitly or explicitly based their various economic theories on an assumption of free competition in the industrial world. They have, of course, made allowances for factors which, in actual life, interfere with the workings of perfect competition—such factors, for example, as custom, coöperation, combination, monopoly, ignorance etc. Professor Seligman mentions five chief forms of competition: (1) commodity competition or the principle of substitution which fixes a limit beyond which prices cannot go; (2) the competition of individual producers of the same commodity or of the same factors of production which "puts every one on his mettle" so that "success is a measure of the contribution to the social fund"; (3) the competition of markets with each other which again leads to reduced costs and more effective service; (4) class competition between groups of producers which affects the apportionment of productive energy and the distribution of wealth; (5) race or national competition, especially in commercial rivalry.

Two cautions should be given. (1) As the orthodox economists understand the term, competition does not mean the entire absence of all forms of coöperation. Some conscious and a great deal of unconscious coöperation takes place in a competitive system, as witness the amount of coöperation which enables each to gratify many wants although he himself performs but one task. (2) Competition is not synonomous with *laissez-faire* (*see*). A competitive system may still have "rules of the game." There are various levels of competition. Indeed, when economists contend that the competitive system results in the greatest good for all, they tacitly imply a limited competition in which all non-serviceable means of pursuing self interest are to be eliminated.

See Labor, Relation of the State; Laissez Faire; Production; Socialism.

References: E. R. A. Seligman, *Principles of Economics* (1905), ch. x; A. Marshall, "Some Aspects of Competition" in *Journal Statistical Soc.* (1890); W. W. Willoughby, *Social Justice* (1900), ch. ix; A. T. Hadley, *Freedom and Responsibility* (1903), ch. v; R. H. I. Palgrave, *Dictionary of Political Economy*

(1894); W. D. P. Bliss, *Encyclopedia of Social Reform* (1908). L. C. MARSHALL.

COMPETITIVE EXAMINATIONS. See CIVIL SERVICE EXAMINATIONS.

COMPOSITE STATE. The term is of varying usage and incapable of exact definition, but may be said to apply to any state composed of parts, each of which enjoys a complete local autonomy that stops short of sovereignty. See FEDERAL STATE; STATES, CLASSIFICATION OF. S. L.

COMPROMISE. Compromise is the very essence of government. "It is a great mistake," says Burke, "to imagine that mankind follow up practically any speculative principle, either of government or of freedom, as far as it will go in argument and logical illation. All government, indeed every human benefit and enjoyment, every virtue and every prudent act is founded on compromise and barter." Not only is every static state a "balance" of interests or a complex of compromises; but the progressive development of society necessitates constant compromising between the new and the old. "Ideas and institutions proper to a past social state," says Spencer, "but incongruous with the new social state that has grown out of it, surviving into this new social state they have made possible, are necessarily, during their survival, in conflict with these new ideas and institutions—necessarily furnish elements of contradiction in men's thoughts and deeds. And yet, as for the carrying on of social life, the old must continue so long as the new is not ready, this perpetual compromise is the indispensable accompaniment of a normal development."

All modern societies are complex, made up of different and often antagonistic interests—group, class, and sectional. If all these antagonistic elements were controlled by abstract considerations instead of powerful economic motives, reasonableness might be the basis of adjustment, but such is not the case in human affairs. From time to time violent antagonisms arise in the body politic which cannot be adjusted by compromise, unless one of the parties is willing to surrender its major interest. Such was the situation during the French Revolution when no common basis of adjustment could be reached between the rising bourgeoisie on the one hand and the clergy and nobility on the other; and in the United States before the Civil War when the militant slave power captured all of the instrumentalities of the Federal Government and laid claim to the western territories. Inasmuch as partisan leaders wax fat on violent antagonisms, "no compromise" is a favorite slogan with the phrase-maker in politics. The man who advocates concessions on both sides is condemned as a "trimmer." In spite of the bad odor in which compromisers often find themselves, it should be borne in mind that for every political "war of extermination" there are a thousand adjustments through concessions. Indeed, it is the man who has miscalculated in his compromises and made terms with an institution or an interest in the nature of things doomed to destruction, that is treated with scorn by the victorious party whose triumph he has unwittingly attempted to delay. The hero by failure to guage correctly the political forces he is attempting to adjust may become the villain simply on account of his mistake in judgment—not his moral shortcomings. Certainly it is more difficult and perplexing to find a golden mean that it is to maintain an uncompromising attitude. Nevertheless the extremist also has his place in the scheme of things. **References:** J. Morley, *On Compromise* (1877); H. Spencer, *The Study of Sociology* (1885). CHARLES A. BEARD.

COMPROMISE OF 1820. The compromise for the admission of Maine as a free state, and of Missouri as a slave state including a prohibition of slavery in the northern part of the Louisiana cession. See MISSOURI COMPROMISE. A. B. H.

COMPROMISE OF 1850. The compromise of 1850 in effect was a determination as to the status in regard to slavery of the former Mexican provinces of New Mexico and California, annexed by military force during the Mexican War, and formally ceded by the treaty of Guadeloupe Hidalgo of 1848 (*see*). It involved also the claim of Texas to extend to the Rio Grande; and into the discussion were interjected questions of the slave trade in the District of Columbia, and the amendment of the fugitive slave laws. The immediate questions raised by the annexation were: (1) was this territory free through the continuance of Mexican law? (2) had Congress constitutional power to prohibit slavery in the territories of the United States? (3) ought Congress in equity to divide the territory by a geographical line? (4) was eastern New Mexico included in the state of Texas?

From August, 1846, to September, 1850, all the sessions of Congress were agitated by these questions; and previous to the session of 1849–50 attempts were made to adjust the question in one or other of the following ways. (1) If the territories were free through the continuance of Mexican law, as Henry Clay believed, no action by Congress was necessary; but the opponents of slavery would not accept Clayton's bill of July, 1848, for leaving the decision of that question to the Supreme Court. (2) The Wilmot Proviso (*see*), introduced in 1846, was a straight-out legislative prohibition of slavery in the new territory; but though the proviso was never enacted, the same principle appeared in the Texas annex-

ation act of 1845, which forbade slavery in any states that might be created out of Texan territory north of 36° 30′, and by the Oregon act of 1848 which prohibited slavery in that territory. (3) In Walker's amendment of February 28, 1849, was embodied the doctrine that the Federal Constitution should be declared extended to the recent annexations; inasmuch as the Federal Constitution undoubtedly contained some guarantees of slavery, the anti-slavery people successfully opposed this proposition, which in 1900 in a new form was passed upon in the Insular cases (*see*). (4) The extension of the 36° 30′ line, which had probably been the plan of President Polk, was blocked by the free state constitution adopted by the people of California (*see*) in 1849, which, though unauthorized, was practically beyond the power of the Federal Government to alter. (5) Suggestions by Dickinson and Cass and others that the people of the territory should decide the question attracted little attention.

By the conjoined influence of Clay and Webster, the two most eminent northern and southern Whigs, a compromise measure was brought forward in January, 1850, which united all the pending questions in the so-called Omnibus Bill (*see*). By the separate statutes into which this was eventually broken up, California was admitted as a free state; the Texan boundary claims were cut down; two territories, Utah (*see*) and New Mexico (*see*) were created, separated by the line of 37°; for each was provided the identical clauses that "the constitution and all laws which are not locally inapplicable shall apply;" that no one should be deprived of "life, liberty or property" except by judicial process; that when ready to come in as states, they might be free or slave-holding as the people should then choose. While this compromise nominally left the legality of slavery to be decided by the courts, the statutes actually opened both territories to slavery, with the evident expectations that the southern one, New Mexico, would become slave holding.

See SLAVERY CONTROVERSY; MISSOURI COMPROMISE; NEW MEXICO; TERRITORIES OF THE UNITED STATES; TERRITORY, CONSTITUTIONAL QUESTIONS OF; TERRITORY, ACQUIRED, STATUS OF.

References: J. F. Rhodes, *Hist. of the U. S.*, (1893), I, ch. ii; T. C. Smith, *Parties and Slavery*, (1906), chs. i, ii; T. H. Benton, *Thirty Years View* (1854–56), II. 744–773; H. von Holst, *Constitutional Hist. of the U. S.* (1881), III, chs. xv, xvi.

ALBERT BUSHNELL HART.

COMPROMISE TARIFF. See NULLIFICATION CONTROVERSY; TARIFF POLICY.

COMPROMISES OF THE CONSTITUTION. See CONSTITUTION OF THE UNITED STATES, COMPROMISES OF.

COMPROMISES PROPOSED, 1860–1861. The secession (*see*) of South Carolina was immediately followed by suggestions of compromise. Thurlow Weed (*see*), November 30, 1860, and many others, made unofficial proposals, among which were compensated emancipation and colonization of slaves. In Congress, December 18, Senator Crittenden of Kentucky proposed five constitutional amendments, protecting slavery and making the line 36° 30′ a permanent division line between slave and free territory, and several resolutions ameliorating the Fugitive Slave Law (*see* FUGITIVE SLAVES) and recommending the repeal of the Personal Liberty laws (*see*). This was defeated by the Republicans in the Senate Compromise Committee of Thirteen, December 22. An attempt to put it to popular vote failed January 16. A Republican compromise offered by Seward (*see* SEWARD, WILLIAM H.) to the Senate committee, and presented to the House by its committee of thirty-three, offered an amendment to protect slavery, and gave the South all existing territory south of 36° 30′ (*see* COMPROMISE OF 1820). This was unsatisfactory to the South. The problem was with regard to future acquisition of territory. A peace convention, called by Virginia, February 4, suggested that annexations require a majority vote of Senators from each section. This was defeated in Congress, March 4. A border state convention, called by Kentucky, met in the summer but was unimportant. **References:** J. F. Rhodes, *Hist. of the U. S.* (1895), III, 140–182, 251–271, 288–291, 305–316; J. Schouler, *Hist. of U. S.* (1891), V, 498–507.

C. R. F.

COMPTROLLER OF THE CURRENCY. This officer is head of the Currency Bureau of the Treasury Department, and has special jurisdiction of the enforcement of the provisions of the National Bank Act, as to supervision, examination, and recommending legislation, and the approval of applications for the establishment of new banks. His duties call for a large amount of discretion and sound judgment as to business conditions, for oftentimes it is unwise to force a bank to a literal compliance with the terms of the law, particularly in times of panic and commercial uneasiness. He has charge of the national bank examiners; to him each bank, upon call, must make a return of its condition according to furnished forms, five times a year; and he has power to order a bank into receivership if satisfied of its insolvency. The annual reports of the comptroller are regarded as one of the most important series of government documents. See BANKING; BANKS, EXAMINATION OF; COINAGE AND SPECIE CURRENCY; TREASURY DEPARTMENT. **References:** J. A. Fairlie, *National Administration of the U. S.* (1905), 95–96; Comptroller of the Currency, *Annual Reports*.

D. R. D.

COMPTROLLER OF THE TREASURY. By the act establishing the Treasury Department (1789) provision was made for an auditor and for a comptroller. The duty of the former is to see that the accounts against the Government are in proper form; of the latter that they are in conformity with the law and that the payments in question have been authorized by statute. The duties of the comptroller are, therefore, largely judicial; and by the Dockery Law (July 31, 1894) this function is still more clearly defined. The duties of the Comptroller are twofold: (1) to him are referred all appeals from the findings of the auditor; (2) he advises and aids the disbursing officers in determining the validity of payments, if any doubt arises in interpreting the appropriation bill or other statute upon which the expenditure is founded. As the comptroller supervises the assistant comptroller, who has power to countersign all warrants, can revise all accounts, and as his decisions are binding upon the Secretary of the Treasury, he holds a powerful position.

He is appointed by the President, and though nominally a subordinate officer in the Treasury Department, through his judicial functions he possesses authority over all expenditures, subject only to review by the judicial courts. In his province he is independent of the Attorney General on questions of law. In refusing to endorse warrants for payments to domestic producers of sugar, one comptroller in 1895 went so far as to claim the right of passing upon the constitutionality of the sugar bounty (*see*) provisions of the McKinley Tariff Act of 1890 (*see*).

See PUBLIC ACCOUNTS; PURCHASE OF PUBLIC SUPPLIES; TREASURY DEPARTMENT.

Reference: W. E. Hotchkiss, *Judicial Works of the Comptroller of the Treasury* (1911), 13–24. DAVIS R. DEWEY.

COMPTROLLER, STATE. A state comptroller—sometimes an "auditor"—has supervision and control of state finances to the end that accounts shall be clear, accurate, complete, all receipts indicated, all expenditures conforming with laws. Bills are paid on his warrant. He ascertains that each claim is valid, payment authorized, funds appropriated and available, that all legal requirements are satisfied. He keeps classified records of verified disbursements, and reports in detail to the legislature, to which he is directly responsible. Discretion and fidelity in exercising these functions determine the extent of actual control, which varies among the states. Recent state boards of control partly supplant comptrollers. See EXPENDITURES, STATE AND LOCAL; PUBLIC ACCOUNTS; PURCHASE OF PUBLIC SUPPLIES AND PROPERTY; STATE DEPARTMENTS, HEADS OF.

References: Constitution and laws of the several states which define powers and duties of State Comptroller; Woodrow Wilson, *The State* (1898), 505; James Bryce, *Am. Commonwealth*, (4th ed., 1910), I, 497–499; R. L. Ashley, *American Federal State* (1903), § 432. E. H. V.

COMPULSORY ARBITRATION. See ARBITRATION, COMPULSORY.

COMPULSORY EDUCATION. See EDUCATION, COMPULSORY.

COMPULSORY MILITARY SERVICE. See MILITARY SERVICE, COMPULSORY.

COMPULSORY VOTING. See VOTING, COMPULSORY.

CONCERT OF POWERS. Concert of powers is the term usually given to the union of the European powers for action upon any question which affects the general political situation, when the policy of a single state might be such as to disturb the existing relations among European states.

The argument for the existence of such concerted action which might force one state to give up a plan upon which it had entered or which it contemplated, is that if a single state has a right to go to war to protect its vital interests, a group of states might with much more propriety join for a similar purpose when their concerted action would probably make war unnecessary.

The "European Concert" in recent years has usually consisted of the six powers, Austria-Hungary, France, Germany, Great Britain, Italy and Russia. This group has acted upon various matters. The Treaty of Berlin of 1878 relates that the powers "being desirous to regulate with a view to European order" etc., "an understanding having been happily established between them, they have agreed to the following stipulations," etc. This treaty regulated in the Near East matters of boundaries, civil and political rights, consular jurisdiction, privileges of foreigners, religious rights, etc.

In later years non-European powers have joined in the "Concert" upon certain matters affecting a larger area as in affairs relating to Africa. Indeed, international congresses and conferences are becoming so common that affairs which in the early nineteenth century were often the subject of arbitrary action by a single state are now regulated by international agreement.

See BALANCE OF POWER; ENTANGLING ALLIANCES; CONGRESSES AND CONFERENCES, INTERNATIONAL.

References: E. Hertslet, *Map of Europe by Treaty* (1891), 2764 *et seq;* T. E. Holland, *Studies in Int. Law* (1898), 114, 148, 267. GEORGE G. WILSON.

CONCURRENT JURISDICTION. The jurisdiction of two or more tribunals all having

authority to hear and determine cases involving the same subject matter and parties, at the choice of the suitor. The most common instance in this country lies in the concurrent jurisdiction of many controversies, possessed by state and federal courts. Thus many suits which might be brought in state courts, might also be brought in, or removed from, state to federal courts, because the parties are residents of different states, or because some question arising under the Constitution or laws of the United States is involved. See COURTS, FEDERAL; COURTS, FEDERAL, JURISDICTION OF; REMOVAL OF CAUSES. H. M. B.

CONCURRENT POWERS. If the word concurrent be strictly used, the scheme of distribution of powers between the central Government and the states cannot be said in general to contemplate the exercise of concurrent authority (*see* UNITED STATES AS A FEDERAL STATE). The National Government has its sphere of action and its particular power and duties; the states with their governments have their spheres of action and their duties. The cases, therefore, when the two governments will both at the same time have jurisdiction over the same subject, are necessarily limited. And yet the mere grant of power to the National Government does not necessarily imply that it cannot be exercised by the states. "On the contrary, a reasonable interpretation of that instrument [the Constitution] necessarily leads to the conclusion that the powers so granted are never exclusive of similar power existing in the States, unless where the Constitution has expressly, in terms, given an exclusive power to Congress, or the exercise of a like power is prohibited to the States, or there is a direct repugnancy or incompatability in the exercise of it by the State" (Houston *vs.* Moore, 5 *Wheaton* 1).

The courts of the two governments necessarily have to some extent concurrent jurisdiction and there are some fields of legislation that may be occupied by the two governments at the same time. Both governments can, for example, provide punishment for making and passing counterfeit money. Both governments can tax and can levy taxes on the same objects; although of course there are limitations on the federal methods of taxation and also limits on the power of the state (*see* MCCULLOCH *vs.* MARYLAND; TAXES, DIRECT). There is also concurrent power in the management and care of congressional elections (*see* ELECTIONS, FEDERAL CONTROL OF). Congressional laws and state laws may in some portions of their field of regulation be in actual force at the same time; but a state law repugnant to a congressional law on the subject would naturally not be good (*Ex parte* Siebold, 100 *U. S.* 371).

The words concurrent powers, however, are commonly used to mean certain powers which may be exercised by the states until the United States legislates on the same matter. The most noteworthy examples are those of bankruptcy and some classes of state legislation affecting interstate commerce. In the case of bankruptcy the states can individually act till Congress legislates on the subject, and an act of the state is not annulled but its operation is only suspended while the national act is in force (*see* BANKRUPTCY). In the case of interstate commerce, there is a field of action of such a character that the states may be able to occupy it till Congress intervenes and supersedes their action. For example, until Congress acts, the states may legislate on the subjects of quarantine and inspection, pilotage, examination and licensing of engineers, methods of heating passenger cars, etc. (*see* COMMERCE, GOVERNMENTAL CONTROL OF; INTERSTATE COMMERCE AND CASES).

See UNITED STATES AS A FEDERAL STATE.

References: W. W. Willoughby, *The Constitutional Law of the United States* (1910), 73–77; Sturges *vs.* Crowninshield, 4 *Wheaton* 122; N. Y., N. H., & H. R. R. *vs.* N. Y., 165 *U. S.* 628. ANDREW C. MCLAUGHLIN.

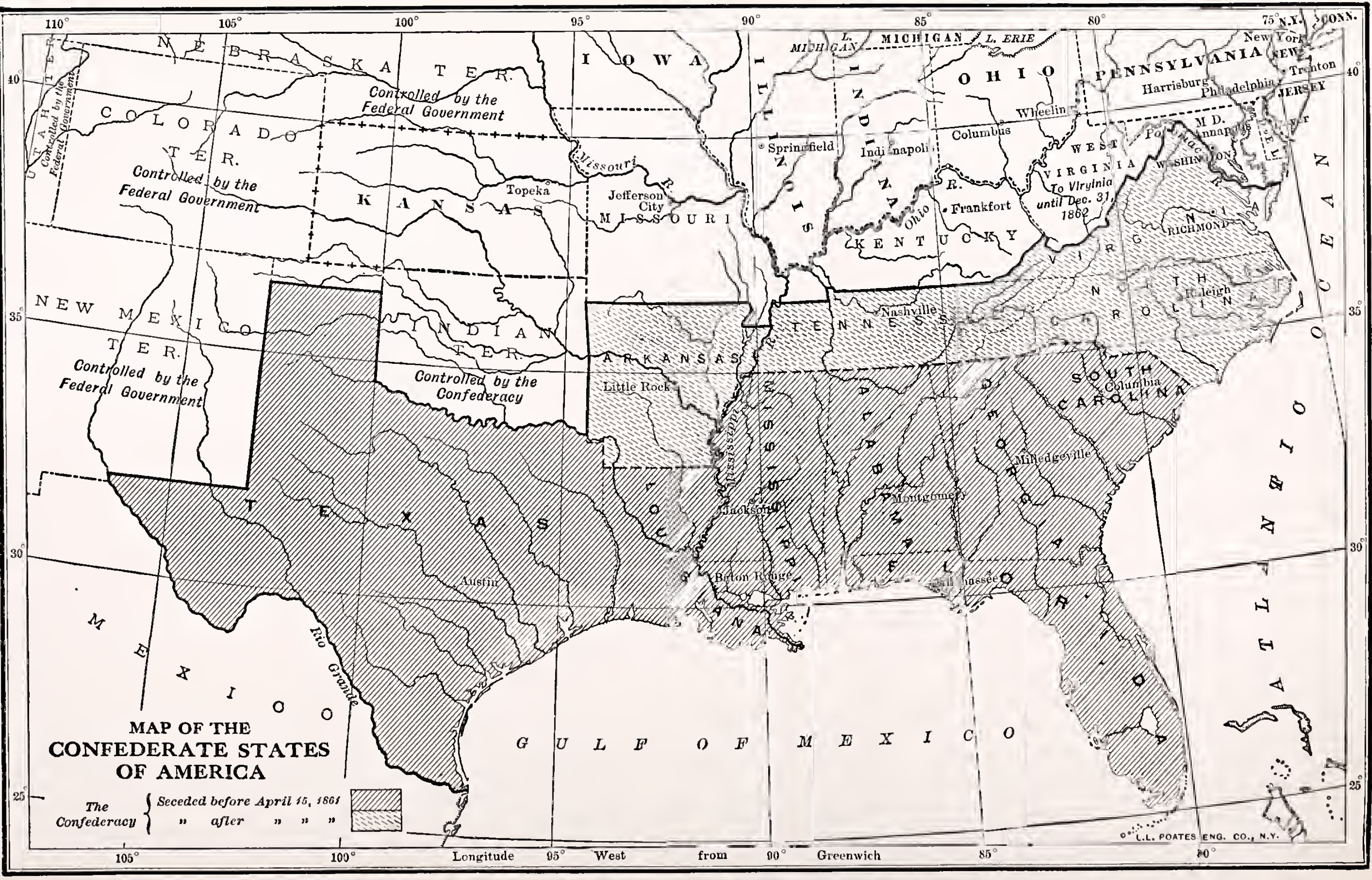
CONCURRENT RESOLUTION. When a resolution of one legislative house "expressing fact, principles, opinions and purposes" of the house is accepted or concurred in by the other house, it is called a concurrent resolution. Unlike a joint resolution (*see*), a concurrent resolution is not sent to the President for his signature. As a rule, concurrent resolutions deal with minor matters, especially printing. Under exceptional circumstances they deal with the rights of Congress. R. L. A.

CONDEMNATION OF LAND. A judicial proceeding for the acquirement of land for public use with due compensation fixed by process of law. See EMINENT DOMAIN.

P. J. T.

CONFEDERATE STATES

Organization.—The Confederate States of America were organized at a congress of delegates from the seceded states of South Carolina, Georgia, Florida, Alabama, Mississippi and Louisiana which met at Montgomery, February 4, 1861. A provisional government for the people of these states was formed in a few days and on February 9 Jefferson Davis (*see*) was made president and Alexander H. Stephens (*see*) vice-president. This temporary government was to continue only one year and its constitution was, therefore, not


MAP OF THE
CONFEDERATE STATES
OF AMERICA
The Confederacy { Seceded before April 15, 1861
" after " " "
ATLANTIC OCEAN
GULF OF MEXICO
MEXICO
PENNSYLVANIA
Harrisburg
Philadelphia
NEW JERSEY
Trenton
New York
N.Y.
CONN.
MD.
WASHINGTON
Potomac R.
VIRGINIA
RICHMOND
NORTH CAROLINA
Raleigh
SOUTH CAROLINA
Columbia
GEORGIA
Milledgeville
FLORIDA
ALABAMA
Montgomery
MISSISSIPPI
Jackson
Mississippi
LOUISIANA
Baton Rouge
TENNESSEE
Nashville
ARKANSAS
Little Rock
TEXAS
Austin
Rio Grande
KENTUCKY
Frankfort
Ohio R.
OHIO
Columbus
WEST VIRGINIA
To Virginia until Dec. 31, 1862
L. ERIE
L. MICHIGAN
MICHIGAN
INDIANA
ILLINOIS
Springfield
IOWA
MISSOURI
Jefferson City
Missouri R.
KANSAS
Topeka
NEBRASKA TER.
Controlled by the Federal Government
COLORADO TER.
Controlled by the Federal Government
INDIAN TER.
Controlled by the Confederacy
NEW MEXICO TER.
Controlled by the Federal Government
UTAH TER.
Controlled by the Federal Government
Longitude West from Greenwich
L.L. POATES ENG. CO., N.Y.

submitted to the states or the people of the states for ratification. But a "permanent" constitution was drawn during the weeks immediately following, approved by the congress on March 11 and submitted to the conventions of the seceded states. It was promptly adopted though it was not to become effective until February 22, 1862; meanwhile the provisional government assumed, with unanimous consent, all the common and general functions which the states could not exercise. All the initiatory steps of the Civil War in so far as the South was concerned were taken by this government. Texas joined the Confederacy, as the new government was called, in March; Virginia in April; North Carolina in May; Tennessee and Arkansas in June; while large portions of Kentucky and Missouri also cast in their lots with the South and sent delegates to the Confederate congresses. The area thus embraced about 800,000 square miles exclusive of what was held in the Indian Territory and New Mexico, and the population of these states and parts of states was about 10,000,000, of which fully 4,000,000 were negroes.

Commissioners Appointed.—With this organization accomplished, the Confederate authorities appointed commissioners to Europe and to the Federal Government to ask for recognition as an independent power. The commissioners appeared in Washington and demanded jurisdiction over the forts and other property of the older government within the bounds of the seceded states. Meanwhile the Confederate Government assumed the jurisdiction in question, hastened the organization of an army and a navy and made appropriations and loans for these and other purposes, all in the most orderly manner and without any opposition on the part of the people of the southern states, though there was grave dissatisfaction in the mountain districts where slavery and its influence had not penetrated. The Federal authorities refused to recognize the Confederate agents or to concede any rights whatever concerning the forts or other property. But the European powers acknowledged the existence of the new nation by granting it the standing of a belligerent in international law, an important concession especially in commercial matters and in the application of the rules of war. It was generally expected that formal diplomatic recognition would soon follow; and in the North there was a strong party, supported by the great financial interests of New York, which advised that the southern states be allowed to "depart in peace." Even President Lincoln thought seriously of such a solution of the problem and William H. Seward, the Secretary of State, gave the southern commissioners, Roman, Forsyth and Crawford, assurance that the forts and other property of the Federal Government would be surrendered without a struggle.

The War Begins.—But the meaning of a separation, the injury to northern commerce and manufactures as well as the probable difficulties about boundaries and the equally probable conflicts of the future wrought a change in sentiment, and President Lincoln, always a true interpreter of public opinion, finally decided not to treat with the southern representatives and especially not to surrender Fort Sumter. This decision was reached between the ninth and the twelfth of April, 1861. At the same time the southern leaders began to fear a restoration of the Union on some such basis as the proposed Crittenden (*see* CRITTENDEN, JOHN J.) compromise; and the Confederate Government found it necessary, in order to hold its own ardent supporters together, to hasten a decision; the firing upon Fort Sumter, which the Davis Cabinet was almost forced to order, on the night of April 12, 1861, aroused the latent military spirit of both northern and southern peoples and war followed. The immediate outcome of President Lincoln's call for 75,000 volunteers on April 15 was the loss to the Federal Government of the border states already named (*see* BORDER STATES). The accession of so much territory north of the lower southern states added greatly to the enthusiasm of the South and caused the removal of the Confederate capital from Montgomery to Richmond and in the early summer the armies of the two sections of the United States prepared for actual conflict on the soil of northern Virginia.

The Constitution.—Meanwhile the permanent constitution had been drawn, mainly by the hand of Thomas R. R. Cobb, a brother of Howell Cobb, submitted to the various state conventions and adopted without dissent, and on November 6, 1861, a general election was held in accordance with the requirements of the new constitution. There was again no serious opposition to what had been done and no candidates opposed Davis and Stephens for the two highest positions in the Confederacy. This constitution provided for a president and vice-president with the same functions and powers that had been given to the executives of the Federal Government, but their terms of office were six instead of four years and they were made ineligible for reëlection. The Cabinet was also similar to that of the Federal Government, except that its members were entitled to present to congress their views on questions affecting their respective departments, in much the same way that English ministers bring matters before Parliament, though this was only partially put into actual practice. The principal members of the Confederate Cabinet were Robert Toombs (*see*), secretary of state, and his successors, R. M. T. Hunter and Judah P. Benjamin (*see*); C. G. Memminger and G. A. Trenholm, secretaries of treasury; L. P. Walker, George W. Randolph, James A. Seddon

and John C. Breckenridge, successively secretaries of war; John H. Reagan, postmaster-general and George Davis, attorney general. All of these were regarded as conservatives and most of them had been opponents of secession as a practical remedy for Southern discontent. The radicals of the decade preceding 1860 were almost all left without public employment under the Confederate government except as they served in the army.

Confederate Congress.—Under the provisional government the general legislature was like that of the colonies under the Articles of Confederation (*see*), unicameral; but in the constitution of the Confederacy the southerners adhered to the form of the federal practice and created a senate whose members were chosen by the state legislatures for terms of six years and a house of representatives composed of delegates elected from districts by popular vote for terms of two years. The functions of senate and house as well as their limitations were the same as in the older government. At the beginning, a majority of the Confederate senators had been members of the United States Senate and many of the representatives had likewise been members of the national House. In both there were but few of the ardent secessionists like Rhett of South Carolina or Wigfall of Texas. However, the greater honors of the military service as well as the more urgent need of the army drew away most of the able and devoted secessionists and their places, at least in the Congress, were taken by men who were less interested in the cause or who had actually opposed the movement. The Confederate congress as a whole was not distinguished either for wisdom of legislative action or harmonious support of the administration.

The Judiciary.—The judiciary of the new government embraced, according to the constitution, a supreme court of one chief justice with four associates and as many district courts and judges as there were states. The supreme court was to hold two sessions a year in the capital for the purpose of hearing appeals from the districts, from the state supreme courts where the Confederate constitution, treaties and laws were called into question and to pass upon the constitutionality of the acts of congress. It will be seen that the supreme court was clothed with powers almost identical with those of the United States Supreme Court. There was, however, much opposition in the states to the creation of such a court based on the remembrance of the South's experience with the Federal Supreme Court, especially during the Marshall period, and it was not until January, 1863, that a bill was introduced into the senate to carry out the provision of the constitution on this subject. The proposition failed and at the same time a law of the provisional congress which authorized a majority of all the district judges to sit as a supreme court and decide appeals from the districts or constitutional questions was repealed, which indicates the growing strength of the State Rights party in the Confederacy. The district judges and the state supreme courts were thus left to settle grave constitutional problems as best they might and to wrangle about the jurisdiction of their respective governments. State courts in North Carolina, South Carolina and Georgia declared unconstitutional most important enactments of the Confederate congress, such, for example, as the Conscript Law of 1862. District judges were threatened by the state legislatures with impeachment in case they persisted in their view of the general law. Before the close of the Civil War the state judiciaries were generally hostile to the Confederate authorities and in some instances actual conflict between them was imminent.

State Rights.—Some other features of the Confederate constitution were in noteworthy contrast to the Federal Constitution. It was definitely stated that the contracting parties were the states and not the people of the several states; a protective tariff was forbidden, while the power to tax exports was specifically granted to the congress on condition of a two thirds vote for its exercise; the African slave trade was also forbidden, though the congress failed to enact laws to effectuate this; and the congress was not to make bills of credit legal tender. The president might veto specific items in bills which he otherwise approved and it was definitely understood that he could remove for cause members of the cabinet and other officials. Finally, slavery and property rights in slaves were put beyond question, and in the event of the annexation of new territory the right of emigration with one's slaves was guaranteed. Amendment of the constitution could be initiated on the call of any three states, whereupon the congress must provide for the assembling of a convention of the states to consider the subject or subjects of the proposed amendment.

Reactionary Tendency.—A curious, though common, American policy of the Confederate president, supported by the states, did much to weaken the new government. The first Cabinet was composed of men who had either opposed the secession movement or who had been rivals of Jefferson Davis for years. Vice-President Stephens had never been on friendly terms with Davis and he had been the most powerful opponent of secession in the South as late as January, 1861; Toombs was hostile to Davis, while Memminger of the treasury department had consistently fought the separatist movement since 1832; L. Pope Walker had been a leader of the unionist forces of North Alabama and even Davis himself had advised South Carolina not to secede as late as November 10, 1860. Of the great generals whom the president of the Confederacy called to the leader-

ship of the armies, only Albert Sidney Johnston really believed in the propriety and necessity of the movement. Lee had never been a state rights man and late in April, 1861, he lamented the "revolution" which the lower South had precipitated. Joseph E. Johnston was of the same opinion, though his political antecedents were less strongly national than those of Lee. In the senate and house a large minority—sometimes a majority—of the leaders was made up of men who had never believed in the wisdom of secession, though most of them acknowledged the right of a state to withdraw from the Union. Toward the end of the war this tendency was especially noticeable in the election of senators Graham of North Carolina and Hershell V. Johnson of Georgia. Thus the movement fell into reaction the very day of its inauguration and men like William L. Yancey of Alabama and Robert B. Rhett of South Carolina, who had fought for the cause for twenty years and actually planned secession in 1850, were repudiated or left in positions where their influence would be of least effect. This is one of the causes still cited in South Carolina for the failure of the Confederacy; certainly it produced much dissatisfaction, and discontent was a primary cause of the final overthrow. The motive of this policy was to conciliate the men who silently or outwardly opposed the break-up of the Union, and its basis rested on the assumption that the ardent friends of secession would be content to be pushed aside while their former opponents were invited to take the positions of power and responsibility in the new government.

Confederate Generals.—The great work of the Confederacy was to be done on the field of battle and this was recognized by all. The South had the great advantage in the beginning in the character of the higher officers who resigned their commissions in the United States Army to accept commands in the army established by the Confederacy. The chief of these were Robert E. Lee (*see*), Joseph E. Johnston, Albert Sidney Johnston and Pierre G. T. Beauregard; all leaders of great ability and long experience in actual warfare. The prestige which these names carried and the confidence which they inspired in the success of the cause, had much to do with the rapid formation and successful organization of the armies with which the Confederacy began operations. During the first year of the struggle, the "new nation" put more than four hundred thousand men into the field and began the building of many ships of war in English and French docks; during the four years of the war almost nine hundred thousand soldiers were enlisted and equipped. Every one in the South, whether he had favored the movement originally or not, counted it a disgrace not to have a part in the fighting, and even now no one in the older southern states will admit that he or any of his family shirked military duty or sent a substitute to the front.

Early Reverses.—The frontier of the Confederacy extending from Norfolk, Virginia, through the southwestern counties of Virginia and through Kentucky to western Missouri was broken at Forts Donelson and Henry in February, 1862, and again at Pittsburg Landing in western Tennessee in the following April. In May of that year New Orleans fell into the hands of the Federals and with the fall of Murfreesborough and Vicksburg in 1863, the western part of the Confederacy was cut off from the main group of states. From the autumn of 1862 the sea front from Chesapeake Bay to Galveston was guarded by an ever tightening cordon of armed ships of war. This blockade effectually closed the ports of the South against all foreign trade. Only along the northern boundary of Virginia did the armies of the Confederacy make any inroads upon the North and these ceased after Lee's defeat at Gettysburg in July, 1863. This was followed by Sherman's march to the sea, which, in the autumn of 1864, cut through the heart of the Confederacy. Under these discouraging conditions, petty personal jealousies arose among the officers of the army not unlike those between the civil authorities of the Confederate and state governments. Joseph E. Johnston, who was connected with many of the most powerful families of the South, became intensely hostile toward Davis and was jealous of the growing fame of Lee, who was the very personification of the "first family" influence; the Confederate congress generally sided with Johnston against the President but feared openly to antagonize Lee.

Economic Conditions.—Enthusiasm for the cause, coupled with early victories in the field, led to the belief that success was only a matter of time. In this confident expectation a debt of $1,500,000,000 was contracted on the part of the Confederate Government alone, and almost as much must have been spent by the states, counties and municipalities, all of which (except in South Carolina) was required to be repudiated by the reconstruction (*see*) acts of the Federal Government in 1865–66. A small portion of this huge debt was due to European creditors, not more than $10,000,000, but all the rest was a total loss to the people of the South, mainly to those who had been slaveowners. Nor does this represent the whole of the economic loss involved in the struggle, for the slaves were assessed and taxed at about two billion dollars at the outbreak of the war, while cotton production and export decreased from four million to less than one million bales between 1860 and 1865. The negroes were freed by the Emancipation Proclamation (*see*) of 1862, and cotton culture did not again reach its former state of profitableness until 1870. The corporate wealth, railroads and manufactures, was almost wholly lost; cotton manufacturing

which was already flourishing in 1860 did not regain its former state till 1880. The saying of the negroes after the war closed "that the bottom rail had got on top" was not quite true for all classes were at the bottom in 1865.

Although the economic value of the slave was at first depreciated, due to the fact that he found himself in a new and strange position, theoretically his value as a producer remained the same, and the direct loss as a result of the Emancipation Proclamation was to the individual slave owner. The enormous economic loss to the South was caused by the waste of fields, loss of cotton, destruction of railroads and general devastation of war.

Railways.—At the beginning of the war the South had three main lines of railroad, that from Richmond *via* Charleston to Montgomery; another from Richmond *via* Bristol and Chattanooga to Memphis; and finally the lines connecting the gulf of Mobile with Cairo, Illinois. During the war the Richmond and Danville road was extended to Greensboro, North Carolina, whence connection with Augusta and Atlanta was made. These roads under the heavy strain of war-time traffic and cut off from the steel and iron mills of the North and England soon ran down and in the end became almost worthless, the primitive wagon roads of earlier days being resorted to. One of the principal causes of Lee's defeat around Petersburg was the breaking down of the transportation system and the resultant inability to secure army supplies though there was plenty on the farms and plantations of Virginia and North Carolina. The factories at Richmond, Augusta, Anniston in Alabama, and other manufacturing centers were wholly inadequate to supply the needs of the Government in the way of ammunition, army equipment and so forth; the people reverted to home manufactures on a large scale, and since there was no acceptable medium of exchange, simple barter came into general vogue.

Martial Law.—In the South as in the North during the crisis of the war governmental functions were very arbitrarily exercised. At different times martial law was proclaimed in the Richmond district, around Norfolk and in western North Carolina, and the benefits of the writ of habeas corpus were frequently denied. Some arbitrary arrests were made, as in the case of John M. Botts of Virginia; but in none of these respects was the Confederate president as arbitrary as President Lincoln, who had less reason for such a course. In the same way the "war governors" of the South frequently overstepped the boundaries of their authority. From the beginning the governors of Georgia, Tennessee and North Carolina treated with contempt many of the perfectly regular demands of the Confederate Government. At times this amounted to open violations of law. And from November, 1864, to February, 1865, a strong party in the Confederate congress, led by Alexander H. Stephens and supported by Governors Vance of North Carolina, and Brown of Georgia, urged the impeachment of Jefferson Davis and the establishment of a military dictatorship with General Lee at the head. The refusal of the latter to countenance the plan alone prevented a practical attempt at its realization.

Foreign Policy.—The foreign policy of the Confederacy was originally based on the expectation that Europe, especially England, could not endure the lack of cotton; Louis Napoleon was allowed to think that a free hand would be given him in Mexico in return for recognition of the new government. These considerations influenced Europe greatly and at one time it seemed only a matter of hours before formal recognition would be accorded. But the stern necessities of the Lancaster mill owners did not influence the English Government as vitally as the Confederacy had expected. As a last expedient the Confederate administration offered to set in operation a comprehensive plan of emancipation and sent Duncan F. Kenner, one of the wealthiest slave-owners of Louisiana, to Europe to offer this as a consideration which it was hoped would bring the English ministry to a more favorable attitude. Though this measure met with most violent resistance, Lee and others lent their support and the South appeared to yield the very point on which she had inaugurated war. Kenner's mission proved abortive and after one more appeal for popular support on the part of the Confederate President and a few members of the congress who still hoped for success, Lee gave up Petersburg and on the ninth of April, 1865, surrendered his army at Appomattox. Davis and his government had journeyed to Danville, Virginia, after the fall of Richmond, April 5; but on receiving the news that Lee had yielded, they hastened on southward to Charlotte, North Carolina, where the last full cabinet meeting was held, and thence on to Washington, Georgia. The party separated and the president was captured in southern Georgia on the tenth of May, 1865. The Confederacy after just four years of stormy existence came to an end.

See Civil War, Influence of, on American Government; Davis, Jefferson; Nullification Controversy; Reconstruction; Secession Controversy; State Sovereignty.

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Nicolay and J. Hay, *Life of Abraham Lincoln* (rev. ed., 1900); *Official Records of the Union and Confederate Armies and Navies* (1877–); J. F. Rhodes, *History of the U. S.* (1893–1907); J. D. Richardson, *Compilation of the Papers and Messages of the Confederacy* (1905); J. C. Schwab, *The Confederate States of America* (1901); A. H. Stephens, *War Between the States* (1868–70). WILLIAM E. DODD.

CONFEDERATE STATES, RECOGNITION OF. The persistent efforts of Confederate agents from 1861 to 1865 to secure recognition failed because of conditions uncontrolled and unappreciated by the Confederate Government. These were the optimistic diplomacy of Seward, the Emancipation Proclamation, and obstinate federal refusal to hold any official communieation interpretable as a recognition of the existence of even a *de facto* Confederate Government. The federal courts have held that the Confederate States were "an unlawful assemblage without corporate power." Other influences were the friendly attitude of the Russian Government, and the English hesitation to join Franee in a policy which the American Government resented as excessively unfriendly.

The British Government claimed that recognition of Confederate belligerent rights by the Queen's proclamation of neutrality of May 13, 1861 (followed by other powers), was justified by Lincoln's blockade of the insurgent ports. This was strenuously but unsuccessfully opposed by Seward who affirmed that the proclamation really created Confederate belligerency. The courts have repeatedly decided that conditions entitling the Confederacy to recognition as a belligerent did not exist until Lincoln's proclamation of August 16, 1861 (based on act of Congress of July 13); although in a test case a federal court refused to hold as pirates the crew of a Confederate cruiser.

Seward early announced that recognition of the "so-called Confederate states" would be regarded as intervention and war, to create a hostile state within the national boundaries—and would result in immediate suspension of diplomatic relations. In 1861 he revoked the exequator of a British consul who, with the authority of his government, conducted negotiations with the Richmond authorities regarding rights of neutrals; and denied the right claimed to communicate with the *de facto* government at Richmond or the governors of separate states, to provide for temporary security of persons or property of British subjects, or to claim redress and reparation. He refused to recognize any coneerted action, combination or understanding of European powers on questions relating to the internal struggle, and declined Napoleon's "officious" offer of mediation which Congress rebuked.

The nearest point reached toward recognition was the speech of Gladstone in 1862, which revealed a policy agreed upon by the British Cabinet; for that reason the decision was withdrawn by Palmerston and never renewed.

See BELLIGERENCY; BLOCKADE; CIVIL WAR, INFLUENCE ON AMERICAN GOVERNMENT OF; REBELLION; STATES IN THE UNION.

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J. M. CALLAHAN.

CONFEDERATION. A confederation is a permanent combination of several individual states, for the purpose of a uniform or identical exercise of the individual rights of sovereignty. Resting on contract, or compact, as it does, and not on a eonstitutional base, a eonfederation partakes of the nature of an international agreement between the component states. There is no single sovereignty created, as in a federal state but rather a union "of strictly independent states, which consent to forego permanently a part of their liberty of action, for specific objects, and they are so combined under a common government, that the latter appears to their exclusion as the international entity." Since, in a confederation, the individual states remain sovereign, the central power must legally and actually be subordinate to the member states. Though parting with a portion of their exercise of sovereign rights, the confederated states still retain their internal sovereignty, dignity and individual political organization, and, to a certain extent dependent on the form of their compact, their external sovereignty. In this respeet they are joined together in a union which at times is rather hard to distinguish from an ordinary alliance. But a confederation is to be differentiated from mere international alliances by the fact that it is a union of states designed to be permanent in character. When a permanent organ of government is formed, however inade-

quate it may be, the union clearly goes beyond a mere alliance. This fact is further emphasized by the erection of some organ designed to perform functions of a judicial nature, in settling disputes which arise between the confederated states. If, a condition which is convenient but not essential, there is also some organ which can determine the contributions of the different states to the common end to be secured, the divergence from a mere alliance is more complete. Furthermore, the line between a confederation and a federal state is clearly marked by the fact that, in a confederation, the essential independence of the individual states is maintained so long as they have the power to withdraw at any time—a right denied to the component parts of a federal state, and so long, also, as the central government does not reach the individual immediately, but mediately, through the several states; in other words, so long as the central government acts on individuals only through the legislatures, executives and judicatures of the individual states. As examples of confederations may be mentioned the Boeotian, Delian, Lycian, Achaean and Aetolian Leagues (*see* GREEK FEDERATIONS); the Rhenish Confederation, 1254–1350; the Hanseatic League (*see*) 1367–1669; and the earlier Swiss confederations 1291–1798; the Confederation of the United States, 1781–1789 (*see* CONFEDERATION, 1781–1789) and the German Confederation, 1815–1866.

See ARTICLES OF CONFEDERATION; CONFEDERATE STATES OF AMERICA; CONFEDERATION 1781–1789; FEDERAL STATE; GERMANY, FEDERAL ORGANIZATION OF; SOVEREIGNTY; STATE RIGHTS; STATES, CLASSIFICATION OF; SWITZERLAND, FEDERAL GOVERNMENT IN; UNITED STATES AS A FEDERAL STATE.

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BURT ESTES HOWARD.

CONFEDERATION, 1781-1789

Character of the Union.—The Articles of Confederation were signed by delegates of Maryland, the last of the thirteen states, March 1, 1781 (*see* ARTICLES OF CONFEDERATION). They provided for a union of sovereign states and confided considerable authority to a congress of delegates. There has been much question as to whether the states thus holding themselves out as sovereign really were sovereign and whether the confederation was therefore in reality a confederation in the sense of the word as we now use it (*see* STATE SOVEREIGNTY). The question cannot be given full consideration here. We may well notice, however, that even in the Constitutional Convention (1787) (*see* FEDERAL CONVENTION) there were some who denied the existing sovereignty of the states. See, for example, King's remarks on June 19, and, probably to the same effect, those of Wilson and Hamilton the same day. The question is, therefore, not purely the result of comparatively recent speculation. However that may be, the states, in the Articles, practically announced their sovereignty, and the terms of the Articles appeared to be in accord with this assumption; and we may here avoid prolonged theoretical consideration and apply ourselves to the task of discovering how these Articles were observed, how the confederate system satisfied the real needs of the times and what, if any, were the manifest defects of the system.

Now we should notice that in all probability unnecessary abuse has been heaped upon the Articles and on the general plan of union. We must remember that after the war the country suffered from the effects of war; in some degree the land had suffered economically, socially and perhaps even morally. At least there was need of recuperation and readjustment, and need, too, of further time for comprehending the necessities of intimate union and substantial government. It was not easy for men who had been engaged in a revolution and a war against authority to create and establish government and that, too, a government beyond the limits of any colony. The trials and vicissitudes of the confederation period may justly be attributed in part to the hard times and the industrial confusion which appeared in some quarters a few months after the peace, or, to put it otherwise, the difficulties often attributed to political maladjustment may rightly be charged in some degree to industrial confusion.

Union and Coercion.—As far as the radical difficulties of the time—the so-called critical period—are to be accounted for by the defects of the confederate system, they may well appear to have been due, not so much to particular failings in the Articles themselves, as to the fact that a confederation of sovereignties was a form of political union unsuited to the real situation and the real need of the people. It was well enough for the states to call themselves sovereign, but could the union persist as a union of sovereignties? Experience clearly pointed to the especial need of confiding certain powers to the central government, powers, that is to say, not so confided by the Articles; but one may well doubt whether these essential powers could have been dele-

gated, at least if they were based on substantial right of enforcement, without changing the confederation into something stronger than a confederation. Concerning this, students of the period and of political theory may differ in opinion. But certain it is that, as the states relied on themselves, neglected the just demands of Congress, acted as if they could live each to itself, and cultivated what Washington called that "monster sovereignty," the union appeared to be toppling down about men's ears, and wise men were in sore distress at the prospect. And certain it is, too, that the disturbances of the period seemed to the men of the time to demand strong union and a system founded on a coercive principle. "Experience has taught us," said Washington, "that men will not adopt and carry into execution measures the best calculated for their own good, without the intervention of a coercive power. I do not conceive we can exist long as a nation without having lodged somewhere a power, which will pervade the whole Union in as energetic a manner as the authority of the State governments extends over the several states." It is not too much to say—and probably the statement might be made more sweeping—that the able men of the time who appreciated union, as in fact most men did, and who thought seriously of the trouble and dangers surrounding them, believed that real power and not mere nominal authority must be given to some central and national power. Even Richard Henry Lee, who declined a seat in the Federal Convention and then opposed the adoption of the Constitution, had, by 1787, come to doubt seriously whether the right to get money from the states must not rest on "power compulsory." We may well believe that, though experience in time pointed out certain powers that must especially be added to those granted to Congress by the Articles, the real inherent trouble was not so much with the improper *distribution* of powers in a confederation of sovereignties as the impropriety, the *unsuitableness*, of the confederate system at all.

Executive Organization.—Such power as the Articles bestowed were in the hands of a Congress of delegates, though provision was made for a committee of the states, a sort of executive committee to sit in the recess of Congress. Even before the Articles were adopted by the last of the states, Congress had provided for further executive officers; it had established the office of secretary for foreign affairs, superintendent of finance, secretary of war, and secretary of marine. Robert Morris became superintendent of finance, and Benjamin Lincoln, secretary of war; the department of marine was, pending a decision of the question of appointment which was never reached, turned over to the finance department. Robert R. Livingston was for a time foreign secretary; but in 1784 John Jay took the office. These officers were necessarily much checked by the inefficiency of the whole system; but Morris did valiant service till he retired in despair in 1784, and Jay worked ably from his accession to the end of the confederation. This appointment of executive officers is an important fact as foreshadowing the departmental system under the Constitution.

Financial Troubles.—The finances were all the time in a sorry plight. In 1783 Morris sent out an appeal for funds. Up to June 30, he said, his payments had been in excess of his receipts by more than a million dollars. "How indeed could it be otherwise," he inquired, "when all the taxes brought into the treasury since 1781 did not amount to seven hundred and fifty thousand dollars?" About this time he estimated the public debt, not including the continental paper money or the sum due the army and not including various sums classed as "unliquidated" as amounting to something over $35,327,000. From November 1, 1781, to January 1, 1786, Congress received from requisitions the sum of $2,457,987.25. For the last fourteen months of this period the recepits were but some $432,000, amounting to about $370,000 per year. Meanwhile, in desperate straights for funds, Congress was seeking to borrow abroad, and the debt of the country simply by additions of unpaid interest was growing portentously. Some money was obtained from Holland, and by the end of 1789 the foreign debt had grown to be $10,098,707. It was quite apparent by 1786 that ruin stared the confederation fairly in the face. "The crisis has arrived," a committee of Congress declared in February, 1786, "when the people of these United States . . . . must decide whether they will support their rank as a nation, by maintaining the public faith at home and abroad; or whether, for want of a timely exertion in establishing a general revenue, and thereby giving strength to the confederacy, they will hazard not only the existence of the union, but of those great and invaluable privileges for which they have so ardously and so honorably contended."

In the meantime effort had been made to secure for Congress more direct means of obtaining money. In 1781 the states had been asked by Congress to vest in it the power to levy a five per cent import duty to pay the debts and interest. But the power was not granted. In 1783 the states were asked to establish for the term of twenty-five years, by some regular and convenient system of their own, a substantial income to assist in discharging the public debt. Each state was asked to provide its proper share of $1,500,000. They were likewise requested to amend the Articles by giving Congress the power for twenty-five years to levy a small import duty, once again only to pay the principal and interest of the debt. But the request was in vain; some of the states acceded to the suggestion,

but unanimous consent to amend the Articles could not be secured. By 1787, moved by the plaintive requests of Congress, all of the states save New York had agreed to allow Congress the right to levy an import, but New York did not yield.

International Troubles.—There were also during these trying years serious troubles in international relations. England, asserting with justice that America had not faithfully performed all her obligations under the treaty of peace, refused or neglected to turn over the western forts. Spain held the mouth of the Mississippi, refused to recognize American right to navigate the river to the Gulf, and held a portion of the territory north of the thirty-first parallel, the limit set by the treaty with England in 1783; the Mississippi question was acute by 1786. The Barbary powers having captured American seamen, held them for ransom, as if, forsooth, Congress had money to pay, when it had no money to pay its debts. Uncertain of its own real power and faced with the danger of state regulations of trade, Congress could treat but inefficiently with any foreign nation.

Trade.—Trade relations were far from satisfactory especially to the northern merchants and vessel owners. There was a feeling in some quarters that Congress must have power to pass a navigation act. As early as April, 1784, Congress passed a resolution asking authority for a limited time to make such an enactment; but the states did not grant the power. Moreover, although trouble with foreign nations was bad enough, there was more or less ill-feeling between the individual states, for some passed commercial regulations of their own and these were better adapted to cause irritation than promote harmony among the members of the union.

Essential Powers.—Reviewing the situation we have just briefly described, we see that facts, and not mere speculation, pointed clearly to at least three essential powers if the union was to hold together and the nation as a whole meet its needs and responsibilities. Congress, or somebody, must have authority to make treaties with assurance that they would be respected and regarded by the states; Congress, or somebody, must have the real power to get money and not merely ask for it; and Congress, or somebody, must have the right to regulate commerce with foreign nations and among the states. It is a fact interesting to the student of history that, of these three powers, the first had belonged to the English government in colonial days; the second—the right to obtain money independently of the free gift of the colonies—had been claimed by England and was the central subject of dispute between colonies and mother country; the third had been exercised by Parliament in colonial times and been recognized by the colonies as a power, which, from convenience and the necessity of the case, might justly be left in the hands of the central government of the empire. These three powers, then, experience under the confederation singled out as necessary portions of the central authority in a substantial union of the states. The powers that were granted could not be carried out with efficiency; but these three powers were a necessary addition to those that had been granted.

Constructive Achievements.—The truth would hardly be told if only the ineffectiveness of the confederate period or the defects of the Articles were dwelt upon. This among other things must be remembered: the people were finding, now, adjustments both political and social; they were also, the pioneers among them, engaged in the great American job of conquering the wilderness, moving off into the great valley beyond the mountains and laying the foundations for new states; and the Congress of the confederation in the course of time worked out the principle of regular colonial expansion by adopting the famous Ordinance of 1787 (*see*). If, in the political and social world, there appeared elements of danger and disintegration, there were, too, elements of construction and stability.

Social Disorder.—By the year 1786, things had reached, as we have already intimated, a serious situation. Congress was pleading with the states for relief, and there appeared no help in sight. It was, moreover, difficult, and for considerable portions of time impossible, to get a working quorum of congressional delegates together. Worst of all there were serious troubles in the states. The paper money craze had attacked a large element of the people. Statute books received acts establishing paper currency or providing for the relief of debtors in a way discouraging to legitimate trade. The debtors, brought into their bad condition in part, perhaps, by extravagance or folly, in part by misfortune, were uneasy and clamorous. In Massachusetts occurred Shays' rebellion, which appeared for a time to threaten the foundations of the newly established commonwealth. The new social forces, let loose or increased in momentum by the Revolution, were difficult to measure and presented most serious aspects to men of conservative instincts. There were, to use Washington's words, "Combustibles in every State, which a spark might set fire to." It was under such conditions as these that men were called to consider the establishment of a more perfect union.

Lessons of the Period.—Finally, whatever we may say of the defects of the confederation, and there is much to be said, the experiences of the period pointed the way to a more effective system. It was seen that a government with real authority was needed, a government that could establish justice and insure domestic tranquility, a government that could do

things and not simply petition states or make requisitions that would remain unheeded. Experience had pointed out with some distinctness the proper or the needful distribution of specific powers between the states and the central government and had taught better lessons than could have been learned, probably, in time of prosperity and quiet. The confederation lasted in a nebulous sort of fashion through 1788 and until the new Constitution was put into order in the early part of 1789. It is difficult to say just when it expired.

See ARTICLES OF CONFEDERATION; CONFEDERATION; CONVENTION, FEDERAL; FEDERAL STATE; STATE SOVEREIGNTY.

References: G. Bancroft, *Hist. of the U. S.* (author's last rev., 1898), VI, 1–203; J. Fiske, *The Critical Period of American History* (1890), 1–229; A. C. McLaughlin, *The Confederation and the Constitution* (1905), 1–183; J. B. McMaster, *Hist. of the People of the U. S.* (1883), I, 1–416; H. von Holst, *Constitutional Hist. of the U. S.* (1877), I, ch. i; W. C. Ford, G. Hunt, eds., *Journals of Congress* (1904) *passim*; F. Wharton, *Diplomatic Correspondence of the Am. Revolution* (1889), IV, V, VI, *passim*; J. F. Jameson, *Essays in the Constitutional Hist. of the U. S.* (1889), 116–185; W. G. Sumner, *The Financier and the Finances of the Am. Revolution* (1891); C. J. Bullock, *Finances of the United States, 1775–1789* (1895).

ANDREW C. MCLAUGHLIN.

CONFEDERATION, ARTICLES OF. See ARTICLES OF CONFEDERATION.

CONFERENCE AS A FACTOR IN GOVERNMENT. The representative system assumes that the representatives will come to a decision through public discussion; but in practice neither Congress nor the state legislatures are much influenced by their own debates. General principles, and, usually, the details of measures, are worked out in advance; and discussion is intended chiefly to impress the outside public. On the administrative side, the heads of most state and city departments are elected by popular vote, and there is no official way of bringing them into harmony with the legislatures.

Hence, American government would be chaos but for a system of conferences, unofficial, private, usually confidential, and often secret. The two most striking examples of regular conference are: the party committees and caucuses; and the President's Cabinet, which has no legal standing, and depends upon the call of the President.

In the states, the governor (if sufficiently forceful) or the party boss, arranges for a programme of legislation; and in some cities the mayor's power of appointment makes him the centre of such conferences. Each house of Congress has a so-called steering committee, at least of the majority party, which is a nonofficial conclave of leading members. The Speaker's exercise of the power of this committee in the House led to the insurgent movement (*see*) of 1910; and the Democrats, when in the majority, in 1911, went back to the caucus, which is virtually a conference of all the members of the party.

Federal legislation has always been much affected by private conferences of members of Congress with the President, who sometimes makes clear how far he will approve legislation that may come to him later. Governors of individuality and independence also do a large part of their work by unrecorded conferences. Where public officers act as the mechanical tools of party bosses, the centre of conference is transferred to the bosses' headquarters; and both the executive and legislative branches of the government are practically carried on by conference with the "Old Man."

See BOSS AND BOSS SYSTEM; CABINET GOVERNMENT, THEORY OF; EXECUTIVE POWER, THEORY OF; INFLUENCE IN GOVERNMENT; ORGANIZATION; POPULAR GOVERNMENT; PUBLICITY.

References: J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, ch. xviii, II, ch. i; A. B. Hart, *Actual Government*, (rev. ed., 1908), ch. v, *National Ideals Historically Traced* (1907), ch. ix.

ALBERT BUSHNELL HART.

CONFERENCE COMMITTEES. Conference committees are temporary committees, composed of an equal number of members from each house of Congress or of state legislatures, selected to reconcile differences in the House and Senate bills or resolutions on one subject. They are made up usually of three managers from each house who have been particularly interested in the measure submitted to conference. The managers may be subject to instruction—"simple" conference—but usually are left "free." Reports must be signed by a majority of the managers from each house. Conference committees may report the measure of one house, a compromise measure, or, if the conference is "free," one different from either of those submitted on the points in disagreement. In Congress, several successive conferences are usually necessary on appropriation bills to reconcile differences. Reports of conferences are privileged, as they may be called up at any time and are not subject to amendment. Conferences are usually held toward the end of a session, the report ordinarily being adopted or rejected without discussion. Conference committees have been criticised on the ground that they usurp legislative powers, leaving no options except the conference report or the failure of legislation on the proposed subject. From its very nature the conference committee is arbitrary in order to be effective. Conferences are less necessary

in state legislatures than in Congress, because, in the rush of law-making, the houses show greater readiness to accept slight modifications of their bills or resolutions. See BILLS, COURSE OF; COMMITTEE SYSTEM; CONGRESS. References: *Senate Manual* (ed. of 1909), 423–437; *Rules of the House of Reps.* (ed. of 1910), 523–552; L. G. McConachie, *Congressional Committees* (1898), 245–252; P. S. Reinsch, *American Legislatures* (1907), 179–182. R. L. A.

CONFIRMATION BY THE SENATE. This term is in general use to describe the power of the Senate of the United States and of most of the upper houses in the state legislatures, to approve or reject nominations for public office made by the President or the governors of the states. It is conferred upon the United States Senate by the Constitution (Art. II, Sec. ii, ¶ 2). See APPOINTMENTS TO OFFICE; EXECUTIVE AND CONGRESS; PRESIDENT, AUTHORITY AND INFLUENCE OF; SENATE; SENATE, COURTESY OF. References: W. Wilson, *Congressional Government* (12th ed., 1896); C. A. Beard, *Readings in Am. Gov.* (1910), 212.
E. H. G.

CONFIRMATION OF APPOINTMENTS, STATE. Confirmation of appointments differs in different states. A few states follow the plan of appointment by the executive of the state, and confirmation by the senate. Earlier, the legislatures had more power in the appointments; the present tendency is in the opposite direction, toward the hands of the governor. In many states the governor has some absolute power of appointment, with no confirmation by the senate. The civil service reform movement in some states is a limitation of the power of appointment, as is also the system of electing more of the officials. See APPOINTMENTS TO OFFICE; CIVIL SERVICE EXAMINATION. References: F. N. Thorpe, *Federal and State Constitutions* (1909); J. H. Finley and J. F. Sanderson, *American Executive* (1908), ch. iii; P. S. Reinsch, *American Legislatures* (1907), 223–224.
T. N. H.

CONFISCATION ACTS. The confiscation of "rebel" property, including slaves, during the Civil War was effected under the authority of two statutes of widely different application. The law of August 6, 1861 (*Stat. at L.* XII, 319) applied only to property actually used "in aid of the rebellion." The statute of July 17, 1862 (*Stat. at L.* XII, 589 and 627) was intended to punish "traitors" designated under a sweeping enumeration. All the offenders' property was to be forfeited and sold, the proceeds to be paid into the United States Treasury and applied to the support of the armies. An "explanatory joint resolution," intended to save the measure from the veto of President Lincoln, who regarded the original bill as violating the attainder clause of the Constitution (Art. I, Sec. ix, ¶ 3), limited the duration of the forfeiture of real estate to the life of the offender. Two Confederate statutes of sequestration (May 21 and August 30, 1861) gave to these federal measures somewhat the character of a retaliatory policy. The proceedings, enforced through the federal district courts under the direction of the Attorney General and the district attorneys, were conducted as action *in rem* with a general conformity to admiralty procedure, allowing, however, the common law right of jury trial (Morris *vs.* Cotton, 8 *Wallace* 507). The acts were not extensively enforced, the largest seizures being effected in the border states, and in Louisiana and New York. Though a considerable litigation was occasioned, the net proceeds secured (approximately $130,000 for the second confiscation act) were almost incredibly small. Financially, then, confiscation was a failure, while the other object of the acts, that of punishment, was very unequally accomplished. The Supreme Court (11 *Wallace* 268) upheld the constitutionality of these acts, placing them in the category of war measures, supported by "an undoubted belligerent right," and declaring that they involved no unconstitutional denial of "due process of law."

See CIVIL WAR, CONSTITUTIONAL QUESTIONS OF.

References: J. F. Rhodes, *Hist. of U. S. from the Compromise of 1850* (1899), IV. 60–64; *Congressional Globe*, 37 Cong., 2 Sess., (1862), *passim;* J. G. Blaine, *Twenty Years of Congress* (1884–86), I, 373; Miller *vs.* United States, 11 *Wallace* 268.

JAMES G. RANDALL.

CONFLICT OF LAWS. A so-called "conflict of laws" arises when it becomes necessary for the courts of one state or sovereignty, in the adjudication of matters before them, to consider the applicability of the laws of other states or sovereignties, as, for example, when suit is brought in one state to secure the construction or enforcement of a contract made in another state, or by persons each domiciled in still other states. Thus arises in many cases the question whether the *lex fori*, the *lex domicilii*, the *lex loci actus*, the *lex loci contractus* or the *lex loci rei sitae* shall govern. The body of rules determining these questions is sometimes termed "private international law." See COMITY, INTERNATIONAL AND INTERSTATE; INTERNATIONAL LAW, PRIVATE; INTERSTATE LAW AND RELATIONS; LEX FORI; LEX LOCI. Reference: J. Story, *Conflict of Laws* (4th ed., 1852). W. W. W.

CONGESTION IN CITIES. Congestion of population is the overloading of available land by residence buildings. The New York Commission on Congestion of Population in 1911

submitted a very comprehensive report, confined almost entirely to conditions in New York; but to some extent the same things apply to other large cities. The report was divided into five parts: (1) conditions of congestion of population; (2) effects of congestion of population and room overcrowding; (3) causes of congestion of population; (4) methods adopted in American and foreign cities to prevent congestion of population and room overcrowding; (5) recommendations for relieving the present conditions and preventing room overcrowding in tenements of the future.

The commission found that about one-sixth of the city's population was housed on one-eighty-seventh of the city's area; this same area containing factories which employ nearly one-half of the factory workers of the city and a large proportion of the office buildings. Tenements and room overcrowding make this great congestion possible. In 1908, there were 71,922 tenements in Manhattan alone. Congestion of population as it exists in New York exercises, directly, or indirectly, a most pernicious effect on the physical, moral and economic condition of the population.

The commission found that congestion was due to several factors, among them being poverty, concentration of factories, high price of land, long hours of work, cost of transit, system of taxation, immigration, etc. The methods presented for relieving and preventing congestion were: to restrict the height or volume of buildings; to regulate the distribution of factories; to fix a lower tax rate on buildings than on land; to improve the transit system, making possible residence at a greater distance from work; to shorten working hours; to restrict room overcrowding in tenements, etc.

For the purpose of studying the question thoroughly, the New York commission appointed thirteen committees to study the more important questions which were regarded as being closely related to congestion, among them being, parks and playgrounds, streets and highways, transportation, factories, taxation, public health, immigration, labor and wages, charities, and crime and delinquency. The report will form the basis for the study and investigation of the subject in other cities facing the same problems.

The congestion in New York City is greater than that in any other city of the world, according to Mr. Lawrence Veiller, the housing expert. He says that the conditions there are without parallel in civilized communities and that "in no other city are there the same appalling conditions with regard to lack of light and air in the homes of the poor." In 1905, the most densely populated part of Bombay, which stands next to New York, housed but 759 per acre, while 1,000 per acre were housed in parts of New York. Many city blocks in Manhattan contain a population of from 2,000 to 3,000.

See Building Laws; City Planning; Rapid Transit; Tenement Houses; Vital Statistics.

References: New York Commission on Congestion of Population, *Report,* (1911); Lawrence Veiller, *Housing Problem* (1910); *Am. Year Book, 1910,* and year by year.

Horace E. Flack.

CONGO FREE STATE. Congo Free State, a territory of central Africa, was, from 1885 to 1908, an appanage of Leopold II, King of the Belgians, and an independent state under autocratic rule. It then became a Belgian colony. The Congo State was the successor of the International African Association founded by Leopold in 1876. Between 1879 and 1884 more than 300 treaties were made with the native chiefs by which the Association acquired lands in the Congo basin. In 1884 the United States recognized the flag of the International African Association as that of a friendly power.

During the Berlin African Conference of 1884–5 a régime for the Congo basin was adopted which provided for a zone of free-trade in central Africa and for the protection of the natives. Although the United States was a signatory President Cleveland refused to submit the General Act to the Senate for ratification, holding that by it the United States would be committed contrary to its traditional policy.

Leopold's undertaking became thoroughly Belgian through the employment of Belgian capital and agents of administration. A monopolistic trade-system effectually closed its territories to foreign commerce. Well-authenticated accounts of cruel exploitation of the natives led to a demand that reforms be undertaken by a responsible government. The Belgian chambers passed an annexation act in 1908 making the Congo State a Belgian colony. Great Britain, as a signatory of the Berlin Act of 1885, and the United States, as having rights under subsequent treaties, declined to recognize the annexation until forced labor was everywhere abolished and the country opened to foreign trade. The present king of Belgium (1912) has expressed himself, after a personal examination of the Congo, as in favor of reform.

See Africa, Diplomatic Relations with; Liberia, Diplomatic Relations with; Open Door; Protectorates.

References: A. J. Wauters, *Bibliographie du Congo* (1894 and reissued); H. R. Fox-Bourne, *Civilisation in Congoland* (1903); E. D. Morel, *King Leopold's Rule in Africa* (1905); A. Vermeersch, *La Question Congolaise* (1906); D. C. Boulger, *Congo State* (1898).

J. S. Reeves.

CONGRESS, CONTINENTAL. See Continental Congress.

CONGRESS OF THE UNITED STATES

Formation.—In the Federal Convention (*see* CONVENTION, FEDERAL) it was recognized by all that under the new form of government the law-making body must be reconstituted and given larger powers than those held by the Congress under the Articles of Confederation (*see*). Dr. Franklin presented an earnest argument in favor of a uni-cameral legislature, but the bi-cameral system was finally adopted less from theoretical considerations or imitation of existing legislatures than because it afforded a solution of the controversy between the large and small states. The grant of two Senators to each of the states recognized their equal dignity as members of the federal Union, while the according to each state representation in the lower house proportional to its population gave assurance that the interests of the large and growing states would be safeguarded.

Representation in the Senate.—After 125 years' development, the membership of each branch of Congress is, to-day, far smaller than that of the corresponding legislative bodies in England and in France. Yet the absolute and the relative growth of the Senate and House have transformed them into very different assemblies from what the framers of the Constitution anticipated and have raised problems not yet settled. The relatively great influence which the two new members exert in the Senate has always made the admission of a new state a distinctly political issue. In the years before the Civil War it was a matter of vital concern to the state rights leaders to see that the South, which had fallen into a hopeless minority in the House, should not be distanced by the North in the Senate through the admission of a free state unbalanced by a slave state. The mere increase in the membership of the Senate from 26 to 96 has made it far less adapted to its distinctive non-legislative functions--ratifying treaties, confirming appointments, and passing judgment upon impeachment charges. Shifts of population have transformed the seeming equality of representation in the Senate into glaring inequality: New York and Nevada are equals on the floor of the Senate, though their populations are in the ratio of 111 to 1, and in the House they are represented in the ratio of 43 to 1. Ten states with a population of 45,830,565 have 20 Senators, while the remaining 38 States, with a population of 45,610,633 have 76 Senators. Such contrasts may grow even more glaring; yet they are likely to persist, for the partition of a state is improbable. But with the admission of the last territories of the continental United States, the Senate has probably reached its maximum membership.

Representation in the House.—In the House, on the other hand, there has been continuous growth, and the end is not yet. Beginning with a representative quota of 30,000, in the first Congress state representation varied from one to ten (*see* APPORTIONMENT). Down to 1860 a table of changes in reapportionment reflects to a considerable degree the widely varying relative growth of the several states. Thus, Virginia, which in the apportionment made by the Constitution headed the list with ten representatives, was accorded 19 by the apportionment following the census of 1790, and this number was gradually increased to 23 in 1820; but by 1860 her representation had declined to 11, and she had fallen to fifth place. In 1911 she has but ten—her original number; fifteen states have outstripped her, and four others tie her for sixteenth place. New York, on the other hand, increased her delegation from 6 in 1787 to 40 in 1830; then it fell to 31 in 1860; at each successive apportionment her delegation has grown, reaching 43 in 1911. Only once has the aggregate number of representatives been cut down: by the apportionment following the census of 1840 the number of members was reduced from 242 to 232. In the fifty years following the apportionment of 1860, in only four instances has a state's representation been cut down (Virginia, 1870, from 11 to 9; in 1880 Maine, New Hampshire and Vermont lost one each). Beginning with 1890, the practical rule has been to fix upon a quota which will enable even the most slowly-growing state to retain its delegation intact, and then distribute the resultant large increase among the rest of the states, giving an additional member to each one having a major fraction of the quota. The result of such a procedure has been to increase the size of the House by 78 members from 1891 to 1913. The number of Representatives in the Sixty-Third Congress is 435.

It is frankly recognized that the House has become more unwieldy and that each increase in its numbers tends to lessen its efficiency, but when an apportionment bill is before Congress these considerations are not weighty enough to overbalance partisan advantage and the interested opposition of the small or slow-growing states to any reduction. In face of this recent tendency to guarantee every state against reduction, the fact deserves emphasis that in earlier years 18 of the states have had their delegations cut down in reapportionments by from one to six members at a time. With such striking precedents in reduction of state representation for the purpose of making it more equitable, it ought not to be impracticable for Congress to do what most of the states

have already done—establish a maximum membership for the House, and after each census reapportion that number. Nothing but a constitutional amendment, however, could make such a limitation binding upon any subsequent Congress charged with making a new apportionment.

Elections.—Not until 1842 did Congress exexcise its power to make regulations as to the time, place and manner of electing members of Congress. In that year it was provided that in states entitled to more than one representative they should be elected by single-member districts. Although later laws have stipulated—thereby going beyond any explicit authorization in the Constitution—that the districts shall be composed "of contiguous and compact territory containing as nearly as practicable an equal number of inhabitants," this has interposed no insuperable barriers to the "gerrymander" (*see* ELECTIONS, FEDERAL CONTROL OF; GERRYMANDER; HOUSE OF REPRESENTATIVES; SENATORS, ELECTION OF).

Representatives at Large.—Since 1842 it has been the law that in case of an increase in the representation of a state, its additional member or members shall be elected at large and the former number elected by the old districts until the legislature shall have redistricted the state. To the Sixty-Second Congress (1911) ten states sent "representatives at large," whose constituency comprised all the voters of the state. Six of these states were entitled to but one representative. North and South Dakota had each been authorized by special act of Congress to elect their two representatives at large. Connecticut and Colorado, on the other hand, had continued throughout a decade to elect one member at large, the party in control in each state preferring to retain the old district lines rather than run the risks involved in redistricting. The theoretical argument that election by the entire state should lead to the choice of better qualified men finds this much of confirmation: five out of the six thus chosen had had previous experience in the House, and two of them had served five terms.

Congressmen Represent Districts.—The Constitution insists that the Senator (and the Representative also) be "an inhabitant of that State" in which he is chosen. In some states unbroken precedent assigns the two Senators to different sections, and in Maryland, for seventy-five years a statute required that one of her Senators be elected from the "eastern shore." In elections to the House custom has gone further than law and has decreed that the Representative must be a resident of his district. This unwritten law is rarely infringed. This custom is the outgrowth of a distorted notion of democracy, of a belief that none but a resident can know the particular needs of the district, and of a desire that the rewards for political service may go to a resident of the district in order that he may be the more devoted to its interests. Yet in its workings there can be no doubt that by narrowing the choice it leads to ineffective representation. A change of a few score of votes in a given district, as a result of chance or of a gerrymander, may throw a most deserving Representative out of his seat and practically prevent his ever reëntering Congress, unless he removes his residence to another district or state. Not only are promising careers thus cut short, but nothing serves as a stronger deterrent to aspiring young men's seeking a congressional career than the knowledge that there can be no assurance of continuity in this branch of the public service. It is to be hoped that the precedents for representation by non-resident members, as in England, may become more numerous. It has been suggested that large states might, with advantage, be divided into districts electing four or five members each. This would tend to enlarge the Representative's horizon and would quicken intelligent interest in politics by reducing the number of wasted or ineffective votes, and would lessen the force of the "land-slides" in Congress, which now often result from comparatively slight changes in the relative votes cast by the parties at the polls.

Relative Powers of Senate and House.—Dominated by Montesquieu's doctrine of the separation of powers, the framers of the Constitution failed to see to what an extent in Parliament there was developing a merging of the executive and legislative powers through the Cabinet. To the Senate they assigned the non-legislative powers of ratifying treaties, confirming appointments, judging impeachments, and electing the Vice-President in case of the lack of a majority in the vote of the electoral college. The House was given even fewer tasks to distract its energies from lawmaking; the impeaching of federal officers, and the electing of the President when no candidate secured a majority in the electoral college.

To a greater extent than in other national assemblies, the two branches are coördinate. The Constitution forbids an adjournment of one branch during a session of Congress, for more than three days, without the consent of the other, or to any other place than that in which the two houses shall be sitting (Art. I, Sec. v, ¶ 4). The terms of members of both houses are fixed by the Constitution, and neither the executive, as in England, nor the executive acting with one of the houses, as in France, can dissolve either branch and order a new election. The two branches are coördinate in legislative power, each having an absolute veto upon the bills passed by the other. The only exclusive legislative power possessed by either house—"all bills for raising revenue shall originate in the House of Representatives"—has been reduced to a nullity by the unrestricted freedom to amend such bills granted by the

Constitution to the Senate—a freedom which has been exercised to the extent of piling 872 amendments upon a single House bill, and of cutting out all but the enacting clause and substituting a new bill.

But the grant of coördinate powers or the enumeration of special legislative powers by the Constitution may give an inadequate view of actual relations between the two branches of the legislative body. For example, the House, under the Constitution has no power over treaties or appointments, yet every treaty which involves an expenditure of money will remain ineffective unless the approval of the House is secured. Moreover, when treaties which provide for distinct alterations in tariff conditions or regulations, as for example was the case in the proposed reciprocity agreement with Canada (1911) the House is likely to act (*see* Ratification of Treaties by the United States). In making appointments Presidents defer not a little to the judgment or importunity of Representatives, particularly in states whose Senators are not in party accord with the President.

Hamilton predicted that, because of its more direct representation of the people, the House would prove the dominant branch, in case of controversy with the Senate. Experience, however, has proved that it is the Senate which usually has its way. This dominant influence has resulted less from the indirect election—that "filtration in the choice" upon which some of the framers of the Constitution laid great stress, but which custom and law have gone far toward reducing to a mere form—than from the Senate's relatively small size, its long term of office, and its gradual renewal. The longer term promotes a more intimate acquaintance between colleagues, which results in more effective coöperation. Moreover, a considerable proportion of the Senators have been promoted from the House, and hence know how to cope with it most successfully.

Continuity of Service in Senate and House.—Changes are apparently taking place in the relative permanency of the two branches of Congress. As recently as 1903 it was estimated that "the likelihood that a Senator will be reëlected at least once is about two to one, and the average service of a Senator appears to be about twelve years," whereas the average term of service in the House "is not more than four or five years." Yet in the first session of the Sixty-Second Congress (May, 1911) there were but 21 per cent of the Senators who had served ten years, and 35 per cent who had served six years, or one full term. In the Senate of fifteen years earlier (January, 1896), 32 per cent had served 10 years or more and 47 per cent had completed at least one term. In the House, on the other hand (May, 1911), 20 per cent had served ten years or more, and 38 per cent had served six years, or three full terms; whereas in the House of 15 years earlier (January, 1896), but 8 per cent had served ten years and but 18 per cent had rounded out three terms, or six years. In 1896, 47 per cent of the members of the House were serving their first term in Congress, 27 per cent their second, while only 26 per cent had served in more than one previous Congress. In sharp contrast are the figures of Congress in 1911, in which but 30 per cent were serving their first term, 16 per cent their second, while 54 per cent had served in more than one previous Congress. In fact, 41 per cent of the members of the House had served six or more years in that body as compared with 36 per cent of the Senators who had served that length of time. The statistics of two particular Congresses, separated by such an interval, do not warrant positive assertions, but they do afford strong evidence that the Senator's hold upon his seat is becoming more precarious at the very time when constituents are coming to appreciate to a greater degree the increased benefit which accrues to the district and to the public service from having experienced representatives.

Not only is the Senate becoming more like the House in rotation in office, but it is losing something of its distinctive personality. There are now in the Senate far fewer men of long and eminent service than a few years ago. Lawyers are still the largest element, but they are legal specialists, not the lawyer-statesmen of the old days. There is evidence that "mere wealth" less frequently secures a seat in the Senate than formerly. Senators are now more likely to be chosen for distinguished service in the state government than because of legislative apprenticeship in the House. Thus in the Senate of 1911 there were 22 ex-governors of states; in 1896 there were but 12. There can be no question that direct primaries (*see* Primary, Direct) and the "Oregon system" of electing Senators, adopted in twelve states before 1913, have tended to retire Senators of the old school, and to inforce upon the members of the upper branch of Congress a direct responsibility to the people of their states which already is stripping the Senate of some of its distinctive features. The change will be accelerated by the direct election of Senators, established by the Seventeenth Amendment (*see*) to the Federal Constitution ratified in 1913.

Compensation of Members.—Some English critics have been wont to argue that men of a higher type would seek congressional service, if members of the Senate and House were unpaid, but under the act of Parliament of 1911 members of the House of Commons are henceforward to receive salaries. If no compensation from the public treasury were made for legislative service, the inevitable result would be to limit the field of choice for Senators and Representatives to men of very large means or to men who openly or secretly

would be in the pay of those whose political or financial interests were looked out for by these men in Congress. For Washington is so uncentrally located and distances in the United States are so enormous, that a conscientious member cannot give diligent attention to the work of the session and at the same time continue in the active conduct of his business or the practice of his profession. By the law of 1907 the salary of Senators and Representatives was fixed at $7,500. The cost of living in Washington is very high, and not infrequently a member has to quit public life, as did ex-Speaker Reed, frankly avowing that his duty to his family requires his return to the practice of his profession in order to acquire a more adequate income. In addition to his salary, each member receives a mileage of twenty cents a mile once to and from his home each session, an allowance of $125 for stationery each year, and $1,500 a year for clerk hire. The member is required to certify that the clerk who receives this was actually employed during the time on public business. In many cases it forms a welcome addition to the family income. The "franking" privilege frees the member from the financial burden of his immense official correspondence, and often covers a multitude of other charges. Each member also receives from the department of agriculture a quota of about $225 worth of garden seeds, which, sown broadcast through his district, are supposed to yield a goodly crop of votes. In each branch of Congress, the presiding officer receives a salary of $12,000.

Sessions.—The Constitution requires that session of Congress be held each year (Art. I. Sec. iv, ¶ 2). Since 1820 the regular session has begun on the first Monday in December. A law of 1872 fixed the date for the election of Representatives throughout the Union upon the Tuesday after the first Monday in November, in the "even" years. Thus the Representatives elected in November, 1912, although legally their term begins March 4, do not convene for their first regular session until thirteen months after their election. This is the "long" session, beginning in December of the "odd" year; it has no fixed term, but continues with recesses until the following July or August, when the completion of its business or the heat of Washington brings an adjournment. The longest session on record—excluding one which was interrupted by very protracted recesses—lasted from December 3, 1849 to September 30, 1850, 302 days. The "short" session, on the other hand, beginning in December of the "even" year, expires by limitation on the third of the following March, to make way for the new Congress which is to come into being the next day.

Serious inconveniences arise from this schedule of sessions, particularly from the wholly unnecessary delay between the election of a House of Representatives, and its organizing and beginning work. It often happens that the congressional election shows that Congress no longer has the confidence of the electorate, yet the discredited House, many of whose members have just failed of reëlection, has still a four-months' session in which it is probable that petty and partisan interests will prevent or hamper any work of broad-minded legislation.

While the ratification of the Constitution was still pending, much anxiety was expressed that the term of Congress had been made too long. But in practice a member elected to the House and taking his seat thirteen months later, sees but a few months of legislative service before the question of his own reëlection becomes of most engrossing interest. Moreover, when an election indicates a radical change in the party control of the House, business interests are seriously perturbed by the thirteen months of uncertainty before Congress organizes, followed by the delays of getting down to actual work; and the short session is always crowded with hasty and ill-considered measures. Experience has led many to believe that our governmental calendar should be radically reformed to accord with the age of steam and electricity rather than of the stage-coach. The results of an election can now be known in a few hours from one end of the country to the other, and the men elected do not need months to reach Washington. There would be substantial gain if the new President could be inaugurated and the new Congress organized within two months of the date when the will of the voters has been revealed at the polls.

Special Sessions.—By the Constitution the President is empowered "on extraordinary occasions" to convene Congress (Art. II, Sec. iii). From 1789 to 1913, there have been 19 special sessions, lasting from ten days to eight months. There is tradition that calling a special session spells disaster for the President, and it is a responsibility which he is always reluctant to assume. Grave as may be the occasion (*e. g.*, to redeem the pledge of tariff revision, 1909 and 1913, or to comply with an understanding with Canada that a reciprocity agreement should be brought to a vote, 1911), the members of both houses grudge attendance upon an extra session, and the President and the country at large breathe freer when it comes to an end. For Congress is not inclined to confine its attention to measures connected with the "extraordinary occasion" which led to its being convened. Particularly if the special session comes after an election has produced a party overturn in the House midway in a President's administration, as in the case of the session which began April 4, 1911, the elements in opposition are likely to unite upon all kinds of obstructive tactics to embarass the ad-

ministration party and secure strategic positions for the coming presidential campaign. There is a strong opinion that the necessity for special sessions, with all their disappointments and petty partisanship, would be almost entirely eliminated if each Congress should convene in regular session within two months of the date when its representatives were elected.

Presiding Officers.—By the Constitution each house is empowered to choose its own officers, but the Vice-President (*see*) of the United States is designated as *ex-officio* the president of the Senate. As he is not a member of that body, it follows that his powers are strictly limited to those of a presiding officer. He does not appoint committees, he votes only in case of a tie, and his powers of recognition and of interpreting the rules are conservatively exercised. For a century the Senate chose its president *pro tempore* (*see*), for the occasion only. But since 1890 the officer thus chosen has served "until the Senate otherwise ordered." Senator W. P. Frye held this position continuously from 1895 to 1911. In the House the Speaker (*see*) is a far more dominating figure. From the First to the Sixty-Third Congress, the office was held by 39 men, for periods varying from a single day to the term of five Congresses—the record of Henry Clay. Andrew Stevenson and Joseph G. Cannon (*see*) each presided over four Congresses. By developing one power after another, successive holders of the gavel built up the Speaker's authority until his influence over congressional legislation was rivalled only by that of the President. Finally, domination by the Speaker became so repressive that March 19, 1910, members of his own party joined with the opposition in a revolt to make the Speaker once more the servant rather than the master of the House (*see* INSURGENTS IN CONGRESS). The special point of attack was the Speaker's control through the committee on rules (*see* COMMITTEE SYSTEM IN THE UNITED STATES; RULES OF CONGRESS). The Senate's rules continue from one Congress to another and have undergone but conservative revision since they were formulated by Jefferson. The House, on the other hand, adopts its rules at the opening of each new Congress. In their formulation, and later in their interpretation and in the bringing in of a new rule to govern any special exigency, the committee on rules has been the controlling authority. For many years this committee had consisted of five members—"the Speaker and his two assistants" and two members of the minority party. The Speaker was chairman and appointed all his colleagues; hence the committee was an organ for carrying his will into effect. Under the resolution passed in 1910, the committee was made elective by the House; it consists of ten members, six from the majority and four from the minority, and the Speaker is excluded from its membership. At the same time a new rule was adopted permitting bills to be placed on a calendar for unanimous consent, to be called twice a month. Intended to curb the Speaker's power of suppressing measures to which he was opposed, it may be questioned whether this change has not freed him of "an irksome and dangerous responsibility" without materially relieving the situation, since under the new regulation the fate of a measure is made dependent not upon the decision of an official responsibly representing the majority and surveying the whole field of legislation, but upon the caprice of any individual member.

Leadership and Party Responsibility in Congress.—Anything closely resembling "cabinet government" as known in England is effectually precluded in the United States by the Constitution's provision: "No person holding any office under the United States shall be a member of either House during his continuance in office" (Art. I, Sec. vi, ¶ 2). Though the heads of the several executive departments have come to constitute a board of advisers of the President, it is impossible, except by constitutional amendment, to effect a merging of the executive and legislative powers through the Cabinet, as is found in parliamentary government. A new House of Representatives is elected for two years' service, and only the stars in their courses can bring that term to a close. In the face of the constitutional barrier, the relative merits of cabinet as contrasted with congressional government receive, in the United States, only academic consideration. Nevertheless, practical politicians have recognized that substantial losses are involved in the separateness between the legislative and executive branches, and that the work of lawmaking might be carried forward with much more intelligence, if guidance could be had from the responsible heads of the several departments. In 1881 a committee of Senators reported favorably a plan for giving seats, with the right to speak, but not vote, in each house to the heads of the executive departments, they to be present in the House and Senate on alternate days. But nothing came of this project. Though shut out from direct contact with the Senate and House, heads of departments may exercise, in indirect ways, a great deal of influence by appearing before legislative committees, by submitting drafts of bills embodying their wishes, and by cultivating the good-will of committee chairmen.

Foreign critics have alleged that while there is, in Congress, much of party spirit, the parties are headless and without effective leadership. Nevertheless, in recent years there has been distinct progress toward a more definite and responsible leadership. In both the Senate and the House, the party caucus is the controlling authority (*see* CAUCUS, LEGIS-

LATIVE, FOR LEGISLATION.) In the Senate it nominates the President *pro tempore,* and designates the committee assignments. It also selects a steering committee which at critical junctures is allowed to exercise autocratie powers as to the order of business. A promising innovation was the creation (March 22, 1909) of the Senate committee on public expenditures, upon which were appointed, *ex-officiis,* the chairmen of seven of the most important committees dealing with matters of finance. Because of the Senate's long term and small numbers, precedent and mutual deference have, there, much sway. Dominating personalities gain a leadership which may remain almost unchallenged for years. The recognition given to seniority in the assignment of chairmanship of Senate committees has at times impaired the efficiency of the service.

In the House, also, the party caucus determines the party's stand, whether as to offices or measures. The most critical caucus is that which names the party's choice for Speaker. In sharp contrast with the Speaker of the House of Commons and with the President of the Senate, for many years the Speaker has been the party's most powerful leader in the House, using and expected to use his office for the carrying into effect of his party's policy. Committee appointments, recognition of members on the floor, interpretation of rules, refusal to entertain dilatory motions, all were used, subject to the approval of the House, for "gaveling through" his party's policy, or for suppressing the opposition. A revolt of Democrats in coalition with "Insurgent" Republicans in 1910 stripped the Speaker of his power in connection with the Committee on Rules, as has been said, and in other ways loosened his grip on the course of legislative business. The next House came under the control of the Democrats. Two months before the legal existence of the Sixty-Second Congress began, at a caucus of its Democratic members-elect by an overwhelming majority, 166 to 7, the power to name the majority's members of the standing committees was devolved upon the party's members of the committee on ways and means, who were elected at this same caucus, and were excluded from other committee service. This committee-selecting by the committee of ways and means has exalted the control of what was already the leading committee of the House. In the first session under the new régime, its chairman gave promise of exercising an effective leadership, the powers of whieh are more fittingly assigned to the man who fights the party's battles on the floor and in the committee-room, than to the presiding officer of the House. The minority leader, elected by the caucus of his own party, was allowed by the majority to name his party's members of the committees, and these were "adopted by the majority without dotting an *i* or crossing a *t*." A further step in the line of developing party leadership is seen in the fact that this minority leader accepted no committee assignment, reserving all his energies for his task of organizing and directing the opposition. In the session which ensued, the principal business before the House was a bill for modifying the tariff law passed by the preceding Congress. To this bill the minority leader presented and urged scores of amendments, yet smilingly refused to say whether he would vote for any one of them. The object of practically all these amendments was obviously to lay snares for the majority.

In recent years another evidence of the developing of better systematized party responsibility has been the institution of the "whips" (*see*) as aids to the Speaker and to the minority leader. While an adverse vote has no such momentous consequences in the House of Representatives as in the House of Commons, it is nevertheless a serious blow to the prestige of the party. The American "whip" duplicates the functions of his English prototype: he is his leader's aide-de-camp, keeping him in touch with his following and with the shifts in sentiment on pending measures; the whip sees that members of the party are in attendance, when a quorum or majority is needed, arranging "pairs" for those who must be absent; he must get recalcitrant members back into line, and at times must serve as the intermediary between the Speaker's office and the White House. Party control may be intrenched by so large a majority that party spirit lags, and the whip's task becomes doubly arduous, while, if the minority is hopelessly small, the opposition whip can effect little.

The Constitution's exclusion of executive officers from the Senate and the House, and the election of members for stated terms preclude the evolution of "cabinet government" in the United States. Nevertheless, the most striking fact in the changes Congress is undergoing to-day is the development of a more systematized party leadership, of a more direct placing of party responsibility.

See ACTS OF CONGRESS; CALENDAR; CLOSURE; COMMITTEE SYSTEM IN THE UNITED STATES; DEBATES IN LEGISLATIVE BODIES; EXECUTIVE AND CONGRESS; EXECUTIVE DEPARTMENTS; CONGRESS OF THE UNITED STATES, POLITICAL PARTIES IN; CONGRESSIONAL GOVERNMENT; JUDICIARY AND CONGRESS; LEGISLATIVE OUTPUT; REPORTS OF COMMITTEES; REPRESENTATIVES IN CONGRESS; RULES OF CONGRESS; SENATE; SENATORS; VOTING IN LEGISLATIVE BODIES.

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257; W. Wilson, *Congressional Government* (12th ed., 1896); H. J. Ford, *Rise and Growth of Am. Politics* (1900), 221–274, *Cost of Our National Government* (1910); J. A. Woodburn, *The Am. Republic* (1906), 196–315; L. G. McConachie, *Congressional Committees* (1898).

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CONGRESS OF THE UNITED STATES, ACTS OF. See ACTS OF CONGRESS.

CONGRESS OF THE UNITED STATES PARTY ORGANIZATION IN. See PARTY GOVERNMENT, COMPARATIVE; PARTY ORGANIZATION IN LEGISLATIVE BODIES.

CONGRESS OF THE UNITED STATES, POLITICAL PARTIES IN

Place of Parties in Congress.—The Constitution establishes a legislative department for whose successful operation political parties are unnecessary. In contrast with England and with European parliamentary countries where the entire character of legislation and administration depends upon the party composition of the lower house, the government of the United States is dependent upon the party membership of Congress only in times of crisis. In ordinary years legislation is little affected by party; and the presence or absence of party majorities of one kind or another in either house are of little value as an index of the legislative efficiency of the Congress in question. Nevertheless, so persistently have parties divided in elections during the whole history of the United States, that a dual party system has become part of the working structure of the Congress. The rise and fall of parties is accurately reflected in the membership of the lower house, and, to a less degree in that of the Senate. Owing to the growth of the party control of the organization of each house and especially the rise of the power of the Speaker, the party membership has been an index of the men who directed the activity of Congress, even when legislation has not been of a partisan character. The following tables of party strength, then, while not affording any such guide as would the party membership of the House of Commons, are illustrative of the party history of the United States and explanatory of the conditions which have led to the development of the speakership (*see* SPEAKER), the caucus (*see*) and the committee system (*see*).

The Origin of Parties in Congress.—At the beginning of the Federal Government two parties were formed, the Federalist and Republican, which resembled English and European parties in being formed largely on class lines; and so long as these lasted the party membership of Congress was a matter of really decisive importance. A fundamental difference as to the aims of federal government and as to the objects of foreign policies made the control of Congress, during the existence of these parties, the determining factor in the government. In the First Congress there were, at the outset, a few Senators and Representatives of avowed Anti-Federalist sentiments; but these never acted together as a party, and for all practical purposes the first session was entirely nonpartisan. But as soon as Hamilton's measures were brought forward, an opposition was formed, which by the end of the third session had assumed a permanent form. While members did not consider themselves party men, the following figures show roughly the proportion of those who upheld the authoritative policy of the administration and those who feared and disliked it.

FIRST CONGRESS, 1789–1891

Senate.—9 Opposition; 17 Administration.
House.—26 Opposition; 38 Administration.
Speaker.—F. A. Muhlenberg, Pennsylvania, Opposition.

During the period of the next Congress parties openly divided, and the names of Republican and Federalist became attached to the followers of Jefferson and Hamilton respectively. Yet many congressmen continued to regard themselves as independent, and it was not until the end of Washington's second term that party loyalty appeared in any strict sense. In the Second Congress, the speakership, already felt to be an important position, was taken from Muhlenberg and given to a recognized supporter of the Federalist administration.

SECOND CONGRESS, 1791–1793

Senate.—13 Republicans; 16 Federalists.
House.—33 Republicans; 37 Federalists.
Speaker.—J. Trumbull, Connecticut, Federalist.

In the Third Congress, the Republicans proved to be in a considerable majority and promptly reëlected Muhlenberg to the speakership. From this time henceforward the election of a Speaker was regarded as a decisive test vote indicating the strength of parties in the lower house. The presidency *pro tempore* (*see* PRESIDENT PRO TEMPORE) of the Senate was also regarded as a party office, but, owing to the absence of any development of power in the office such as marked the rise of the speakership, it never became an important test of party strength.

THIRD CONGRESS, 1793–1795

Senate.—13 Republicans; 17 Federalists.
House.—57 Republicans; 48 Federalists.
Speaker.—F. A. Muhlenberg, Pennsylvania, Republican.

In the Fourth Congress, the party majority in the House was supposed at the outset to rest with the Republicans, but a moderate Federalist was chosen Speaker and on all important administration measures, a very small majority favored the Federalists. The parties were almost evenly divided.

FOURTH CONGRESS, 1795-1797

Senate.—13 Republicans; 19 Federalists.
House.—52 Republicans; 54 Federalists.
Speaker.—J. Dayton, New Jersey, Federalist.

Period of Federalist and Republican Parties, 1795–1815.—From the Fifth Congress the party distinction between Federalist and Republican was fixed for a generation, and the political division in each house were clearly marked.

FIFTH CONGRESS, 1797-1799

Senate.—12 Republicans; 20 Federalists.
House.—48 Republicans; 58 Federalists.
Speaker.—J. Dayton, New Jersey, Federalist.

SIXTH CONGRESS, 1799-1801

Senate.—13 Republicans; 19 Federalists.
House.—42 Republicans; 64 Federalists.
Speaker.—T. Sedgwick, Massachusetts, Federalist.

SEVENTH CONGRESS, 1801-1803.

Senate.—18 Republicans; 14 Federalists.
House.—69 Republicans; 36 Federalists.
Speaker.—N. Macon, North Carolina; Republican.

EIGHTH CONGRESS, 1803-1805

Senate.—25 Republicans; 9 Federalists.
House.—102 Republicans; 39 Federalists.
Speaker.—N. Macon, North Carolina, Republican.

NINTH CONGRESS, 1805-1807

Senate.—27 Republicans; 7 Federalists.
House.—116 Republicans; 25 Federalists.
Speaker.—N. Macon, North Carolina, Republican.

TENTH CONGRESS, 1807-1809

Senate.—28 Republicans; 6 Federalists.
House.—118 Republicans; 24 Federalists.
Speaker.—J. B. Varnum, Massachusetts, Republican.

ELEVENTH CONGRESS, 1809-1811

Senate.—28 Republicans; 6 Federalists.
House.—94 Republicans; 48 Federalists.
Speaker.—J. B. Varnum, Massachusetts, Republican.

TWELFTH CONGRESS, 1811-1815

Senate.—30 Republicans; 6 Federalists.
House.—108 Republicans; 36 Federalists.
Speaker.—H. Clay, Kentucky, Republican.

THIRTEENTH CONGRESS, 1813-1815

Senate.—27 Republicans; 9 Federalists.
House.—112 Republicans; 68 Federalists.
Speakers.—H. Clay, Kentucky, L. Cheves, South Carolina, Republicans.

The Era of Good Feeling, 1815–1825.—With the termination of the War of 1812, the reasons for antagonism between Federalist and Republican parties ceased to exist. There followed a period in which the old names persisted but ceased to have any political significance beyond the fact that few or no Federalists were appointed to federal offices (*see* ERA OF GOOD FEELING). In Congress, the Federalists did not act in opposition to Madison or Munroe and after 1815 ceased to vote for a separate candidate for Speaker. For ten years certain congressional districts in New England, New York, Pennsylvania, Delaware, Maryland, Virginia and North Carolina, returned Federalists to the House of Representatives and sundry states returned Federalist Senators, but party contests in these elections were in reality nothing more than local rivalries. After 1815 it is not certain just how many Federalists were in any Congress. In years of great legislative activity, and rising sectional feeling over the tariff and finances, the old names attracted little attention.

FOURTEENTH CONGRESS, 1815-1817

Senate.—25 Republicans; 11 Federalists.
House.—117 Republicans; 65 Federalists.
Speaker.—H. Clay, Kentucky, Republican.

FIFTEENTH CONGRESS, 1817-1819

Senate.—34 Republicans; 10 Federalists.
House.—141 Republicans; 42 Federalists.
Speaker.—H. Clay, Kentucky, Republican.

In the Sixteenth and succeeding Congresses the numbers become increasingly conjectural. At the time of the proposed presidential caucus in the winter of 1824 when the Republican nomination was to be made, it was roughly guessed that "forty or forty-five" Federalists were in Congress, but no one seemed certain. The names were, in fact, obsolete.

SIXTEENTH CONGRESS, 1819-1821

Senate.—35 Republicans; 7 Federalists.
House.—156 Republicans; 27 Federalists.
Speakers.—H. Clay, Kentucky, J. W. Taylor, New York, Republicans.

SEVENTEENTH CONGRESS, 1821-1823

Senate.—44 Republicans; 4 Federalists.
House.—158 Republicans; 25 Federalists.
Speaker.—D. P. Barbour, Virginia, Republican.

EIGHTEENTH CONGRESS, 1823-1825

Senate.—44 Republicans; 4 Federalists.
House.—187 Republicans; 26 Federalists.
Speaker.—H. Clay, Kentucky, Republican.

The Jacksonian Period, 1825–1837.—In 1825 began a period in which the formation of political parties took place rapidly but they did not base themselves upon any clear legislative policy until after 1837. The adherents of General Jackson as candidate for the presidency organized an opposition to the administration of President John Quincy Adams which ultimately developed into the Democratic party. But from the outset the purposes of this party were so closely limited to carrying presidential elections, that the existence of Jacksonian majorities in either or both houses of Congress was almost without legislative significance. The tie of the party was personal loyalty to Jackson, and so long as Jackson and his managers remained without any congressional policy, it was perfectly possible for Jacksonians to differ widely on all issues but the single one of supporting their chief in elections. The actual leadership in legislation might be and in fact was exercised by members of the minority. For a number of years this new form of party organization continued.

NINETEENTH CONGRESS, 1825-1827

Senate.—20 Jacksonians; 26 Administration.
House.—97 Jacksonians; 105 Administration.
Speaker.—J. W. Taylor, New York, Administration.

TWENTIETH CONGRESS, 1827-1829

Senate.—28 Jacksonians; 20 Administration.
House.—119 Jacksonians; 94 Administration.
Speaker.—A. Stevenson, Virginia, Jacksonian.

In the year 1828 the supporters of Adams took the name of National Republicans (*see*), and the Jacksonians were called, with an approach to regularity, Democrats.

TWENTY-FIRST CONGRESS, 1829-1831

Senate.—26 Jacksonians, 22 National Republicans.
House.—139 Jacksonians; 74 National Republicans.
Speaker.—A. Stevenson, Virginia, Jacksonian.

In the Twenty-second Congress, there appeared the third party of Anti-Masons (*see*) who represented the sole opposition to the Democrats in New York and Pennsylvania and had some influence in Vermont and Massachusetts. There were also certain adherents of Clay who designated themselves as Clay Democrats.

TWENTY-SECOND CONGRESS, 1831-1833

Senate.—25 Democrats; 21 National Republicans; 2 Anti-Masons.
House.—141 Democrats; 58 National Republicans; and Clay Democrats; 14 Anti-Masons.
Speaker.—A. Stevenson, Virginia, Democrat.

In the Congresses after 1833 Jackson's policies began to drive groups of his nominal supporters into opposition, which cost him from time to time the control of one house or the other. The first group to separate was composed of the South Carolinians who formed an independent faction of Nullifiers. Jackson's determination to secure the succession of Van Buren to the presidency also drove into opposition a considerable number of southern "state rights" Democrats.

TWENTY-THIRD CONGRESS, 1833-1835

Senate.—20 Democrats; 6 States Rights; 2 Nullifiers; 20 National Republicans.
House.—147 Democrats; 10 States Rights; 7 Nullifiers; 43 National Republicans; 53 Anti-Masons.
Speakers.—A. Stevenson, Virginia, J. Bell, Tennessee, Democrats.

In the Twenty-fourth Congress the Anti-Masons, National Republicans and State Rights or anti-Van Buren Democrats were grouped together under the new name of Whig (*see* WHIG PARTY).

TWENTY-FOURTH CONGRESS, 1835-1837

Senate.—27 Democrats; 25 Whigs.
House.—145 Democrats, 98 Whigs.
Speaker.—J. K. Polk, Tennessee, Democrat.

In the next Congress a still further division appeared, due to the conservative financial policy inaugurated by Van Buren after the panic of 1837. The Conservatives were a group of Democrats who opposed the sub-treasury plan. On the other hand a group of the former southern State Rights Whigs supported Van Buren's policy, and the Nullifiers rejoined the Democratic party.

TWENTY-FIFTH CONGRESS, 1837-1839

Senate.—30 Democrats; 3 Conservatives; 1 Nullifier; 18 Whigs.
House.—108 Democrats; 13 Conservatives, 11 Sub-Treasury Whigs, 107 Whigs.
Speaker.—J. K. Polk, Tennessee, Democrat.

Period of Whig and Democratic Balance, 1839-1855.—In the next Congress the various elements of opposition to Van Buren finally united under the name Whig and the two-party system thus reëstablished lasted for sixteen years in spite of all disturbing influences.

TWENTY-SIXTH CONGRESS, 1839-1841

Senate.—28 Democrats; 22 Whigs.
House.—124 Democrats; 118 Whigs.
Speaker.—R. M. T. Hunter, Democrat.

In the Twenty-seventh and Twenty-eighth Congresses a small group of members supported President Tyler before being absorbed in the Democratic party. In the Twenty-ninth Congress, there appeared a group of Native American congressmen, representing a movement in the larger cities against foreigners (*see* AMERICAN PARTY).

TWENTY-SEVENTH CONGRESS, 1841-1843

Senate.—22 Democrats; 2 Tylerites; 28 Whigs.
House.—102 Democrats; 6 Tylerites; 133 Whigs.
Speaker.—J. White, Kentucky, Whig.

TWENTY-EIGHTH CONGRESS, 1843-1845

Senate.—25 Democrats; 1 Tylerite; 28 Whigs.
House.—142 Democrats; 1 Tylerite; 79 Whigs.
Speaker.—J. W. Jones, Virginia, Democrat.

TWENTY-NINTH CONGRESS, 1845-1847

Senate.—31 Democrats; 25 Whigs.
House.—143 Democrats; 77 Whigs; 6 Native Americans.
Speaker.—T. W. Davis, Indiana, Democrat.

THIRTIETH CONGRESS, 1847-1849

Senate.—36 Democrats; 21 Whigs; 1 Independent.
House.—108 Democrats; 115 Whigs; 4 Independents.
Speaker.—R. C. Winthrop, Massachusetts, Whig.

In the three next Congresses a third party appeared in the shape of the Free Soilers (*see*) or Free Democrats (*see*) as they later termed themselves. This small group was composed about equally of former Democrats and Whigs.

THIRTY-FIRST CONGRESS, 1849-1851

Senate.—35 Democrats; 25 Whigs; 2 Free Soilers.
House.—112 Democrats; 109 Whigs; 9 Free Soilers.
Speaker.—H. Cobb. Georgia, Democrat.

THIRTY-SECOND CONGRESS, 1851-1853

Senate.—35 Democrats; 24 Whigs; 3 Free Soilers.
House.—140 Democrats; 88 Whigs; 5 Free Soilers.
Speaker.—L. Boyd, Kentucky, Democrat.

THIRTY-THIRD CONGRESS, 1853-1855

Senate.—38 Democrats; 22 Whigs; 2 Free Soilers.
House.—159 Democrats; 71 Whigs; 4 Free Soilers.
Speaker.—L. Boyd, Kentucky, Democrat.

The Slavery Contest and the Civil War, 1855-1867.—In 1854 the Whig party broke

in pieces as a result of the excitement over the repeal of the Missouri Compromise. Many of its northern and nearly all of its southern members joined a new party, the American or Know-Nothing organization. The rest of its northern supporters united with the Free Soilers and a few Democrats to form the new Republican party (*see*). In the Thirty-fourth Congress there was at first much confusion but by the second session three groups emerged about as follows:

THIRTY-FOURTH CONGRESS, 1855-1857

Senate.—40 Democrats; 5 Americans; 15 Republicans.
House.—83 Democrats; 43 Americans; 108 Republicans.
Speaker.—N. P. Banks, Massachusetts, Republican.

In the next two Congresses there appeared a division in the Democratic party, the followers of Senator Douglas (*see* DOUGLAS, STEPHEN A.) of Illinois separating from the administration on the issue of the admission of Kansas (*see*) under the Lecompton constitution (*see* ANTI-LECOMPTION DEMOCRATS).

THIRTY-FIFTH CONGRESS, 1857-1859

Senate.—36 Democrats; 3 Anti-Lecompton Democrats; 5 Americans; 20 Republicans.
House.—118 Democrats; 11 Anti-Lecompton Democrats; 15 Americans; 92 Republicans.
Speaker.—J. L. Orr, South Carolina, Democrat.

THIRTY-SIXTH CONGRESS, 1859-1861

Senate.—36 Democrats; 2 Anti-Lecompton Democrats; 2 Americans; 26 Republicans.
House.—92 Democrats; 7 Anti-Lecompton Democrats; 24 Americans; 114 Republicans.
Speaker.—W. Pennington, New Jersey, Republican.

At the outbreak of the Civil War, there appeared in the northern slave states a Union party (*see*) which later spread to the free states and ultimately was united for a short time with the Republicans.

THIRTY-SEVENTH CONGRESS, 1861-1863

Senate.—10 Democrats; 8 Unionists; 31 Republicans.
House.—43 Democrats; 30 Unionists; 105 Republicans.
Speaker.—G. A. Grow, Pennsylvania, Republican.

THIRTY-EIGHTH CONGRESS, 1863-1865

Senate.—9 Democrats; 5 Unionists, 36 Republicans.
House.—75 Democrats; 9 Unionists; 102 Republicans.
Speaker.—S. Colfax, Indiana, Unionist.

THIRTY-NINTH CONGRESS, 1865-1867

Senate.—10 Democrats; 42 Unionists.
House.—42 Democrats; 149 Unionists.
Speaker.—S. Colfax, Indiana, Unionist.

Modern Republican and Democratic Parties, 1867-1913.—In the eleetion of the Fortieth Congress the reconstruction question caused a new alignment of parties, the Republican organization reappearing and the Unionists of the Civil War period returning in many cases to the Democratic ranks. From this time onward the two parties Republican and Democratic have remained steadily opposing elements in the Congressional government of the country. Every effort to destroy either of these parties or to supplant one of them by a new organization has resulted in failure. The party organization outside Congress or within it is independent of issues and exists without regard to the questions of the moment.

FORTIETH CONGRESS, 1867-1869

Senate.—11 Democrats; 42 Republicans.
House.—49 Democrats; 143 Republicans.
Speaker.—S. Colfax, Indiana, Republican.

FORTY-FIRST CONGRESS, 1869-1871

Senate.—11 Democrats; 56 Republicans.
House.—63 Democrats; 149 Republicans.
Speaker.—J. G. Blaine, Maine, Republican.

In the Congresses after 1870 there appeared a third party the Liberals (*see* LIBERAL REPUBLICAN PARTY) composed chiefly of Republicans who opposed the administration of President Grant and made a coalition with the Democratic party in 1872 in hopes of preventing his reëlection. After the nomination of Hayes by the Republicans in 1876 most of the Liberals returned to their original party.

FORTY-SECOND CONGRESS, 1871-1873

Senate. 17 Democrats; 52 Republicans; 5 Liberals.
House.—104 Democrats; 134 Republicans; 5 Liberals.
Speaker.—J. G. Blaine, Maine, Republican.

FORTY-THIRD CONGRESS, 1873-1875

Senate.—19 Democrats; 49 Republicans; 5 Liberals
House.—92 Democrats; 194 Republicans; 14 Liberals.
Speaker.—J. G. Blaine, Maine, Republican.

FORTY-FOURTH CONGRESS, 1875-1877

Senate.—29 Democrats; 45 Republicans; 2 Liberals.
House.—169 Democrats; 109 Republicans; 14 Liberals, and Independents.
Speakers.—M. C. Kerr, Indiana, S. J. Randall, Pennsylvania, Democrats.

FORTY-FIFTH CONGRESS, 1877-1879

Senate.—36 Democrats, 39 Republicans; 1 Independent.
House.—153 Democrats; 140 Republicans.
Speaker.—S. J. Randall, Pennsylvania, Democrat.

From the Forty-sixth, to the Forty-ninth Congresses there appeared the third group of Greenbackers of the so-called National party, and the Virginia faction of Readjusters which ultimately became Republican in the Forty-ninth Congress.

FORTY-SIXTH CONGRESS, 1879-1881

Senate.—42 Democrats; 33 Republicans; 1 Independent.
House.—149 Democrats; 130 Republicans; 14 Nationalists.
Speaker.—S. J. Randall, Pennsylvania, Democrat.

FORTY-SEVENTH CONGRESS, 1881-1883

Senate.—37 Democrats; 37 Republicans; 1 Independent; 1 Readjuster.
House.—135 Democrats; 147 Republicans; 9 Nationalists; 2 Readjusters.
Speaker.—J. W. Keifer, Ohio, Republican.

FORTY-EIGHTH CONGRESS, 1883–1885

Senate.—36 Democrats; 38 Republicans; 2 Readjusters.
House.—197 Democrats; 118 Republicans; 1 Nationalist; 5 Readjusters; 4 Independents.
Speaker.—J. G. Carlisle, Kentucky, Democrat.

FORTY-NINTH CONGRESS, 1885–1887

Senate.—34 Democrats; 43 Republicans.
House.—183 Democrats; 140 Republicans; 2 Nationalists.
Speaker.—J. G. Carlisle, Kentucky, Democrat.

FIFTIETH CONGRESS, 1887–1889

Senate.—37 Democrats; 39 Republicans.
House.—169 Democrats; 152 Republicans; 2 Labor; 2 Independents.
Speaker.—J. G. Carlisle, Kentucky, Democrat.

FIFTY-FIRST CONGRESS, 1889–1891

Senate.—37 Democrats; 39 Republicans.
House.—159 Democrats; 166 Republicans.
Speaker.—T. B. Reed, Maine, Republican.

Disturbance of Parties by the Silver Issue, 1891–1903.—Beginning in 1890 for a period of ten years the balance of Republican and Democratic parties was disturbed by the rise of the Farmers' Alliance (*see*) movement culminating in the creation of the People's party (*see* POPULIST PARTY). To this was added the agitation of free silver (*see* SILVER COINAGE CONTROVERSY) which ultimately cut across both the old parties and led to considerable confusion in elections. In recording the membership of most of these Congresses, it is not easy to determine the proper affiliations of many chosen by fusion. Contemporary statements vary widely and the following table is little better than a compromise between the extreme claims of partisans.

FIFTY-SECOND CONGRESS, 1891–1893

Senate.—39 Democrats; 47 Republicans; 2 Peoples'.
House.—235 Democrats; 88 Republicans; 9 Peoples'.
Speaker.—C. F. Crisp, Georgia, Democrat.

FIFTY-THIRD CONGRESS, 1893–1895

Senate.—44 Democrats; 38 Republicans; 3 Peoples'.
House.—218 Democrats; 127 Republicans; 11 Peoples'.
Speaker.—C. F. Crisp, Georgia, Democrat.

FIFTY-FOURTH CONGRESS, 1895–1897

Senate.—39 Democrats; 43 Republicans; 6 Peoples'.
House.—105 Democrats; 244 Republicans; 6 Peoples', 1 Silver.
Speaker.—T. B. Reed, Maine, Republican.

FIFTY-FIFTH CONGRESS, 1897–1899

Senate.—34 Democrats; 47 Republicans; 5 Peoples'; 2 Silver.
House.—113 Democrats; 204 Republicans; 11 Peoples'; 3 Silver; 26 Fusionists (Democratic and Peoples').
Speaker.—T. B. Reed, Maine, Republican.

FIFTY-SIXTH CONGRESS, 1899–1901

Senate.—26 Democrats; 53 Republicans; 5 Peoples'; 2 Silver; 1 Independent.
House.—163 Democrats; 185 Republicans; 7 Peoples'; 2 Silver.
Speaker.—D. R. Henderson, Iowa, Republican.

FIFTY-SEVENTH CONGRESS, 1901–1903

Senate.—31 Democrats; 55 Republicans; 4 Peoples' or Silver.
House.—151 Democrats; 197 Republicans; 9 Fusionists.
Speaker.—D. R. Henderson, Iowa, Republican.

At the end of the free silver agitation the various scattered elements of the decade beginning in 1890 joined the older parties and the two party system remained undisturbed until a schism in the ranks of the Republican Party in 1912 led to the foundation of the Progressive Party. The new party, however, has not sufficient strength in Congress to exert any material influence.

FIFTY-EIGHTH CONGRESS, 1903–1905

Senate.—33 Democrats; 57 Republicans.
House.—178 Democrats; 208 Republicans.
Speaker.—J. G. Cannon, Illinois, Republican.

FIFTY-NINTH CONGRESS, 1905–1907

Senate.—33 Democrats; 57 Republicans.
House.—136 Democrats; 250 Republicans.
Speaker.—J. G. Cannon, Illinois, Republican.

SIXTIETH CONGRESS, 1907–1909

Senate.—31 Democrats; 61 Republicans.
House.—164 Democrats; 222 Republicans.
Speaker.—J. G. Cannon, Illinois, Republican.

SIXTY-FIRST CONGRESS, 1909–1911

Senate.—32 Democrats; 61 Republicans.
House.—172 Democrats; 219 Republicans.
Speaker.—J. G. Cannon, Illinois, Republican.

SIXTY-SECOND CONGRESS, 1911–1913

Senate.—41 Democrats; 51 Republicans.
House.—228 Democrats; 161 Republicans; 1 Socialist.
Speaker.—C. Clark, Missouri, Democrat.

SIXTY-THIRD CONGRESS, 1913–1915

Senate.—51 Democrats; 44 Republicans; 1 Progressive.
House.—291 Democrats; 127 Republicans; 9 Progressives; 7 Progressive Republicans; 1 Independent.
Speaker.—C. Clark, Missouri, Democrat.

References: A. K. McClure, *Our Presidents and How We Make Them* (1900); B. P. Poore, *Political Register and Congressional Directory* (1878); *Congressional Directory* (1870–1913); H. Niles, *Weekly Register* (1811–1849); *Tribune Almanac* (1838–1913).

THEODORE CLARKE SMITH.

CONGRESSES AND CONFERENCES, INTERNATIONAL. See INTERNATIONAL CONGRESSES AND CONFERENCES.

CONGRESSES AND CONVENTIONS IN THE REVOLUTION. The term Congress was chiefly applied during the American Revolution to meetings of delegates from the several colonies for the purpose of securing common action. The term did not connote a law-making body, but rather a deliberating body whose counsel might or might not be taken. In the stress of war its advice often had the force of law. There were three general bodies to which the term was applied. The First Continental Congress, the Second Continental Con-

gress and the Congress of the Confederation. In the case of the latter, its decrees had the force of law within the narrow limits of its powers as specified in the Articles of Confederation. There were also local or provincial congresses. Here, the name was used to describe revolutionary bodies, taking the place of regular legislatures which had met under royal authority. The word convention had at first, in the Revolutionary period, a meaning not distinguishable from the term congress. Later the term was chiefly applied to assemblies of delegates chosen for the purpose of making a state constitution after the royal government had been overthrown. See CONVENTION, FEDERAL; REVOLUTION, AMERICAN, CAUSES OF; STATE GOVERNMENTS DURING THE REVOLUTION. References: C. H. Van Tyne, *Am. Revolution* (1905), 53, 139–142.

C. H. VAN T.

CONGRESSES IN THE STATES. See CONGRESSES AND CONVENTIONS IN THE REVOLUTION; STATE GOVERNMENTS DURING THE REVOLUTION.

CONGRESSIONAL CAUCUS. See CAUCUS, LEGISLATIVE.

CONGRESSIONAL GOVERNMENT

Two Types of Modern Constitutional Government.—It is certainly a very curious and significant fact that the governments of England and the United States, springing as they do from the same historic roots, and possessing so many similar and identical elements, nevertheless stand as the types, as they are also the oldest examples, of opposite forms in the most important classification to which modern constitutional governments can be subjected. The one as the model of cabinet (*see*) or ministerial government, the other as the pattern of congressional or presidential government, has been widely copied by other states. often with too little regard for special circumstances and needs. Congressional government has not, indeed, been so successful as its rival in this appeal to other nations. It has never succeeded in establishing itself upon the continent of Europe; Switzerland alone presents some of the features of the American system. The Latin-American states have generally adopted congressional government, but even here some features of the cabinet form have usually been introduced.

Congressional government rests fundamentally upon the theory of the separation of powers (*see*) which asserts that the preservation of liberty requires that the executive, legislative and judicial functions shall be exercised by different and separated organs. Cabinet government disregards this maxim and combines in the organ of the ministry the primary and controlling power over both legislation and administration. In congressional government the executive and the legislature are very nearly independent of each other. They are not absolutely so, for advocates of separated powers have always admitted the necessity of certain "checks and balances"; but such responsibility as the executive does owe to the legislature is very meager and enforced only by the crudest and most uncertain sanctions, while the tenure of office of both executive and representatives is definitely fixed by the fundamental law. In congressional government the head of the state is vested with the actual and active, and not merely the nominal, direction of the administration. The members of his Cabinet are not ministers in the European sense, but merely heads of departments who are solely responsible to their chief and entirely dependent upon him (*see* CABINET; EXECUTIVE DEPARTMENTS). Neither the chief executive nor his subordinates may be members of the legislative body, nor participate in its deliberations. Instead of one committee, the ministry, being charged with the initiation and control of all important laws, this function is entrusted to numerous, independent standing-committees, each charged with the supervision of a single department of law-making. Congressional government assumes that administrative and legislative functions are essentially different and require different organs and different methods for their exercise.

Development of Congressional Government in the United States.—The adoption of congressional government in the United States was due both to the influence of the political philosophy current in the eighteenth century, and to historic forces deep rooted in the colonial era. The doctrine of the separation of powers (*see*), enunciated by Montesquieu and Blackstone, was accepted as a maxim of political science. The English Government was thought to embody this principle. It was not seen that already the development of the cabinet had entirely vitiated it, and the further development of the ministry was, of course, not foreseen. The period of the adoption of the Constitution was one of reaction against the spirit of radical democracy which had swept all before it at the time of the revolt against the mother country. Men were deeply impressed with the need of establishing safeguards against the dangers of unrestricted democratic rule. They believed it necessary to check the legislature, the organ of democracy, by a strong executive. The idea of "checks and balances"

(*see*) appealed with great force to the men of 1787, and the Constitution throughout attempts to balance one authority over against another, to check and limit every organ of government by some other organ. But more important probably than the theories of Montesquieu and Blackstone was the experience of the colonial governments. These were actually constructed on the principle of separated powers. The governor was in all but two cases appointed by the crown or proprietor, and the history of nearly every American colony is largely one of quarrels and conflicts between executive and legislature, which, deriving their authority from different sources, maintained throughout a strict severance of function. While not explicity incorporated in the Federal Constitution, as it was in some of the state constitutions of the period, the principle of separated powers is implicit in the framework of government which was established. Imbedded in a rigid, written constitution, it has, on the whole, thus far resisted the tendencies toward an approximation to cabinet government. Certain conventions and practices have, it is true, developed, which modify in no small degree the relations of the executive and the legislature, but whatever may be expected of these in the future, the American Government remains at present one of separated powers (*see* EXECUTIVE AND CONGRESS).

Advantages and Disadvantages.—The primary aims of cabinet and of congressional government are different. Neither is abstractly the better; the special circumstances and needs of each country must be considered in reaching a conclusion concerning their comparative merits and defects. Cabinet government is designed to give immediate and complete effect to the will of the majority. It is essentially government by the leaders of the dominant party. These leaders are vested with the fullest and largest powers and are then held to a strict responsibility for all their acts. Efficiency is the keynote of cabinet government. Congressional government looks primarily to the security of individual rights. It is designed to prevent any tyranny on the part of the majority. Under congressional government it is possible to endow the courts with the supreme prerogative of protecting the rights of the individual, and even when necessary of over-riding the statutes of the legislature. Security and stability are the corner-stones of this type of organization.

Congressional government is certainly seriously lacking in unity, and therefore in efficiency. It is much more productive of friction than cabinet government. In administration, legislation and the formation of policy, alike, the defects of congressional government in this respect are apparent. Administration is hampered at every turn by minute legislative regulations passed without the collaboration or consent of the executive agents who must enforce them. The spoils system (*see*) with all its attendant evils, while not a necessary feature of congressional government, has justly been charged to the administrative inefficiency and the lack of a well-enforced responsibility which accompanies it. Corruption and extravagance in the public service certainly have far better chance to thrive undiscovered and unpunished in a system of separated powers than where every nook and corner of administrative action is subjected to the search-light of parliamentary questions or interpellations. On the side of legislation there is much force in John Stuart Mill's view that there is a "distinction between the function of *making* laws, for which a numerous popular assembly is radically unfit, and that of *getting good laws made*, which is its proper duty." The government of the United States has been described as " government by the standing-committees of Congress" (*see* COMMITTEE SYSTEM). Instead of all important bills being prepared by the ministry which presents them as a program, the real control over law-making is vested in a large number of committees whose work has little unity or correlation. Probably the most glaring example of this lack of all system or plan is found in financial legislation. Instead of a well-thought-out budget, prepared by the finance minister who possesses all the necessary information, our revenue and appropriation laws are the product of several different committees which make little effort to coördinate their work. Legislation is conglomerate and heterogenous; it is enacted in piece-meal and haphazard fashion. Log-rolling and lobbying, sheltered in the darkness which lack of responsibility affords, naturally accompany the enactment of laws passed in this way. What is popularly called the "pork-barrel" (*see*) method of enacting river and harbor bills and tariff measures is rooted deep in the principle of severed functions. It is in the system which forces upon Congress functions for which it is not competent that the "interests" find their opportunity to control to so large an extent the making of laws. In the same manner the broad lines of foreign and internal policy, partly the product of the chief executive and his immediate subordinates, partly the work of the chairmen of legislative committees, reflect most strikingly the discord and confusion which this system involves. Vagueness, uncertainty and lack of definite purpose are too often the characterstics of American governmental policy. A strong President is occasionally able to swing Congress into line and compel it to accept his leadership, but generally the chairmen of the great standing-committees have as much to say in regard to policy as the chief executive, and too frequently their views are widely divergent.

In spite of the many obvious advantages of cabinet government, it would not be safe for the United States to attempt to change over

to that form. The American system is largely the product of historic evolution. It fits our needs and we know how to operate it. The sudden transition to the cabinet type would throw the entire mechanism of government out of gear. The importance of the Senate would be destroyed and it would be reduced to such a phantom of a legislative body as is the House of Lords. Such a change would seriously undermine the federal principle and tend to centralize everything in the hands of the National Government. And it would impair the commanding position of the Supreme Court, and tend to break down the safeguards embodied in our written Constitution.

Tendencies of Change.—No government can maintain a strict severance of legislative and executive functions. The organ that executes the state's will must have some voice in the forming of that will. The interests of good government, moreover, demand a strict responsibility of the agents of administration, which the representatives of the people are alone in a position to enforce. With the increase in the number of state activities, and the development of a highly complicated system of governmental functions, this necessity for correlation and unity becomes more imperative. In the United States the tendencies in this direction, embodied in conventions and practices, are apparent and significant. Behind both Congress and the President there is the party organization to which both owe allegiance, and which, through the formulation of platforms and the choice of candidates, does much to harmonize and unify governmental work. The exclusion of members of the Cabinet from seats in Congress is strictly maintained (*see* CONGRESS) but hearings are granted them before the committees, and still more informal conferences between them and committee chairmen partly supply the need of a connection between the legislature and the executive. This private contact, however, for the very reason that it is carried on in the dark is liable to serious abuse and still more subject to suspicion. Congress is developing some control over heads of departments through the instrumentality of committees of investigation, which, although unable to compel the resignation of a delinquent official, are nevertheless of much importance in directing the flood-light of publicity upon hidden operations of a department, and in affording opportunity for the vigorous expression of public opinion. It is, indeed, through the development of an ever active and compelling public opinion that the most significant changes in the actual practice of government are to be expected. The President, because he is better able to "keep his ear to the ground" than Congress, because he is a better organ of public opinion, is rapidly achieving a supreme position in legislation as well as in administration. The President's office has been greatly enhanced in power and dignity in recent years because it has afforded the opportunity for leading and guiding, as also for carrying into effect the will of the people. In the era of government by public opinion (*see*) which we are approaching, the tendency toward which is quite as noticeable in England as in the United States, is it not possible that the two antipodal types of cabinet and of congressional government may merge in a higher and more perfect form?

See CABINET GOVERNMENT; COMMITTEE SYSTEM; CONGRESS; EXECUTIVE DEPARTMENTS; HOUSE OF REPRESENTATIVES; MINISTERS AND MINISTERIAL RESPONSIBILITY; SENATE.

References: W. Wilson, *Congr. Government* (15th ed., 1900); A. L. Lowell, *Essays on Government* (1889), Essay I; G. Bradford, *The Lesson of Popular Government* (1899), I, chs. xvi–xix; F. Snow, in Am. Academy of Pol. and Soc. Sci., *Annals*, III (1892), 1–13, "A Defense of Congressional Government" in Am. Hist. Assoc., *Papers*, IV (1890), No. III, 309–328; J. Bryce, *The Am. Commonwealth* (4th ed., 1910), I, chs. xx, xxi, xxv, xxvi; Henry Sidgwick, *The Elements of Politics* (1891), ch. xxii; H. J. Ford, *Cost of Our National Government* (1910); "Senate Select Committee" in *Senate Reports*, 46 Cong., 3 Sess., No. 837 (1880–1881).

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CONGRESSIONAL RECORD. Reports of the debates and legislative proceedings of Congress are contained in the following publications for the periods indicated: 1789–1824 (1st Cong.—18th Cong., 1st Sess.), *Annals of Congress;* 1824–1837 (18th Cong., 2d sess.—25th Cong., 1st Sess.), *Register of Debates;* 1833–1873 (23d—42d Cong.), *Congressional Globe;* 1873 to date (43d—62d Cong.), *Congressional Record.* The first three were issued by private publishers and copies were purchased by Congress for its own use and for distribution. In these the debates are more or less abridged and important state papers and the public laws are appended. The *Register* (14 vols. in 29 pts.) and the *Globe* (46 vols. in 103 pts.) were contemporary reports. The *Annals of Congress* (42 vols.) were compiled and published from 1834 to 1856 by Gales and Seaton, who for a number of years prior to the issue of the *Register* had currently reported the debates in the columns of their newspaper, the *National Intelligencer.* The proceedings of the Senate from 1789 to 1799 were secret and are, consequently, not included. *An Abridgement of the Debates*, 1789–1850, by T. H. Benton (published 1857–61 in 16 vols.) was made from the above reports.

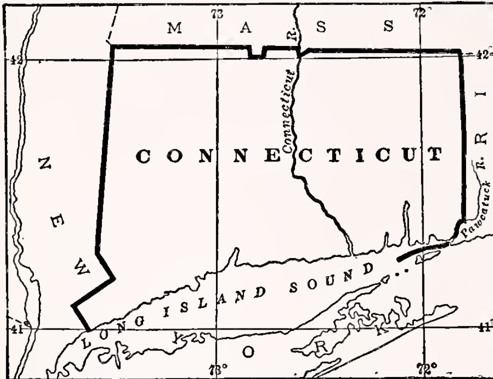
Official reporting *verbatim* was instituted at the beginning of the *Congressional Record,* the present series, which is printed at the Government Printing Office. After each day's proceedings, typewritten copies of the stenographers' notes are submitted for preliminary

revision to the members whose remarks they contain and the corrected report appears next morning as the *Daily Congressional Record.* The principal speeches are, however, frequently held out of their proper places in the proceedings for printing under special captions, generally in a later issue. An opportunity for further revision is afforded to members before the final edition in volumes is issued after the close of each session. In this, speeches held out are returned to their chronological places or printed in an appendix. Speeches not actually delivered and other matter are included under "leave to print," frequently with a view to subsequent use as campaign documents, as the franking privilege of members extends to extracts from the *Record.* Indexes are issued semi-monthly and at the end of the session, in two parts: (I) by subjects and persons; (II) a history of bills and resolutions in numerical order. See PUBLICATIONS, GOVERNMENTAL.

J. DAVID THOMPSON.

CONNECTICUT

Colonial History.—Connecticut, one of the thirteen original states, was first settled by the Dutch in 1633, but within the next two or three years they were crowded back to the Hudson by English colonists. These came in three groups. One established a fort and trading post (Saybrook) at the mouth of the Connecticut River; another came from Massachusetts to found towns upon the river, higher up; and a third soon followed, which set up the "jurisdiction" of New Haven (*see*) on Long Island Sound between Saybrook and New Netherland. The Earl of Warwick was one of the Plymouth Council which had the paper title to "New England." In 1630 it conveyed to him, and in 1631 he conveyed by a patent afterwards confirmed by the Crown, to Lords Say and Seal and others, all that is now within the bounds of Connecticut together with part of southern Massachusetts, and westward a strip of the same width, running across the continent. With their approval the upper settlements on the river were made, which afterwards became Hartford, Windsor, Wethersfield and Springfield.



BOUNDARIES OF THE STATE OF CONNECTICUT

First Constitution.—In 1639 the freemen of Hartford, Windsor and Wethersfield (the settlers at Springfield having concluded to adhere to Massachusetts) met and adopted a permanent form of government in the shape of eleven "Fundamental Orders." This is a social compact, between the inhabitants of the three towns, in order to secure for the "people" so gathered together "an orderly and decent Government, established according to God," whereby they associated and conjoined themselves "to be as one Public State or Commonwealth." It provided for semi-annual general "Assemblies or Courts," at the first of which were to be chosen by secret ballot a governor and not less than six magistrates. A plurality was sufficient to elect the governor. No one could be chosen a magistrate who had not been nominated at a previous general court. Two such nominations could be made by each town, and the general court itself could, if it saw fit, add further names to the list. Every nomination was to be voted on separately at the ensuing court, those in favor of electing the nominee to cast a written ballot and those not in favor of it a blank ballot. Everyone for whom were cast more written ballots than blanks was to be declared elected. If it thus happened that less than six were successful, that number was to be filled up by declaring those others to be elected who had received the most votes. No one could be chosen governor who had not served as a magistrate, and the governor was not immediately reëligible. To each general court each town sent four deputies, elected by ballot and a plurality vote. No one could be chosen a magistrate or deputy who was not a freeman. The court consisted of the governor, at least four magistrates, and a majority of all the deputies, and was vested with "the supreme power of the Commonwealth." The governor presided, but could vote only in case of a tie. He was always to be a member of some congregation. No religious test was imposed as to other officers, or as to admission as a freeman, the power of which lay in the general court. The deputies could assemble in caucus by themselves before each court.

The general court could not alter these orders, so as to prevent the whole body of freemen from electing the magistrates. Five years later it altered them by requiring each law to

have the assent of a majority both of the magistrates and the deputies. In 1660 the referendum was introduced. In order to keep John Winthrop, Jr., then governor, in office, it was proposed to repeal the provision that the governor could not be elected two years in succession. The general court "thought meet to propound it to the consideration of the freemen," who voted that the order in question should be altered so that for the future there should be "liberty of a free choice yearly," and Winthrop was immediately reëlected.

New Haven gradually spread out into a colony of several towns. Meanwhile in 1644, the governor of the Saybrook fort, acting for the Warwick patentees, had sold the title to their settlement to Connecticut, handed over their corporate seal, and agreed to convey to it thereafter all their title under the Warwick patent, should it come within his power to do so.

Royal Charter.—In 1662 Connecticut obtained a charter from Charles II, covering the territory included in the grant to the Saybrook patentees, and confirming the ample powers of self-government previously exercised. New Haven remonstrated, but in vain, against her political extinction. By this time the number of magistrates had gradually grown to be twelve and constituted a standing governor's council as well as an integral part of the general assembly. The charter required annual elections by popular vote, all the freemen meeting together for this purpose. The former practice had been to permit voting "by proxy," that is, by ballots cast in each town and brought up, sealed and uncounted, to the capital by its deputies. This, the charter notwithstanding, was expressly confirmed by the general assembly in 1670 and in 1750 made the only mode of conducting an election. In 1698 by vote of the general assembly it was divided into two houses. In 1776 it resolved that the form of government should "continue to be as established by charter" so far as was consistent with the independence of the state, and it was over forty years before it was thought necessary to frame anything else in the nature of a written constitution.

The Constitution of 1818.—Such a constitution was adopted in 1818. It followed, in the main, the ancient usages. The general assembly remained a bicameral body, one house representing the towns on substantially an equal footing, and the other the people at large. The governor, however, was no longer a member of it. The "magistrates" became "senators." The judges of the higher courts who had been elected annually by the general assembly were now to serve during good behavior or until seventy years of age. Suffrage was confined to taxpayers or members of the militia. In 1845 it was extended to all white males of full age. The color test was struck out in 1876. Since 1855 ability to read the Connecticut constitution or laws has been required.

In 1828 the state was divided into districts, each to elect one senator. For a time the districts remained nearly equal in population, but with the growth of large towns they have long been very unequal since, in forming a district, no county can be divided nor have less than one, nor can any town be divided so as to put part of it in one district and part in another district which includes all or part of another town.

In 1884 the constitution was amended by making the state elections biennial instead of annual. In 1856 the term of office for judges of the higher courts was reduced to eight years. In 1880 the power of the general assembly to elect them was restricted to action upon nominations by the governor. Rarely before 1880, and never since, with one exception, in case of a judge whose term expired when he was on the verge of seventy, has one of these judges failed of reappointment. A constitutional convention was held in 1902, which framed a new constitution differing very slightly from that in force, but the people did not ratify it.

Early Legislation.—The ancient mode of electing the upper house of the general assembly secured for nearly two centuries remarkable stability in legislation. The magistrates were generally reëlected from year to year for life. The nomination list of twenty, of whom twelve were to be chosen, was arranged in such an order that the names of those who were at the time in the magistracy stood first. The natural tendency was to vote for the first twelve, and the other eight really constituted a "waiting list." The upper house, therefore, from 1639 to 1828, consisted mainly of men representing the political views prevailing ten or twenty years before.

After the formation of parties in the United States, Connecticut was a strong Federalist state down to 1817. A coalition between the Democrats (Republicans) and those who dissented from the established church, styled the Toleration party, was then successful in sweeping the state and the constitution was among the first fruits of their victory. Equality between religious denominations having been secured, the Toleration party soon disappeared and the Whig or Republican party has since been oftener the successful one.

One of the leaders in the main settlements on the river was Roger Ludlow, a barrister of the Inner Temple. He was authorized in 1644 to draft a body of laws for the Connecticut colony, and his work was approved by the general court in 1650. It constituted a code of 65 pages in 70 articles, arranged alphabetically by their titles. There was prefixed a declaration of rights closely following that prepared for Massachusetts by Rev. Nathaniel Ward a few years earlier. In 1655 the

New Haven colony adopted a code of 67 articles similar to that of the Connecticut colony and arranged in like manner.

The original towns were also churches, all of the Congregational order. Taxation was on a basis of income and the freemen at town meeting taxed themselves at the same time for the support of church and state. As the towns grew in population, this practice gave way to the erection of a second or even a third church of the established order by the general assembly. The inhabitants of the new parish became both an ecclesiastical and a school corporation and taxed themselves for both purposes. Gradually laws were passed permitting the formation of churches of other denominations and exempting their members from taxation for the support of those of the Congregational order. The constitution of 1818 contains provisions to that effect but permits each ecclesiastical society to tax its own members for church purposes in proportion to their taxable property, as shown by the town tax list. Public schools in each town were early provided and attendance was soon made compulsory.

Western Bounds.—Connecticut for more than a century insisted on her ownership of all the land within the bounds of her patent, or at least on all not covered by actual English settlements. That part of it lying within the charter limits of Pennsylvania Connecticut erected, in 1774, into the town of Westmoreland, and attached it to her westernmost (Litchfield) county. Pennsylvania refused to recognize the title thus set up and the Continental Congress in 1782 decided—after a full hearing—against it. In 1786 she ceded all her right and title to these western lands to the United States save the Western Reserve (*see* CESSIONS BY STATES TO THE FEDERAL GOVERNMENT).

Population.—By the beginning of the eighteenth century Connecticut had a population of about 20,000; at the middle of it, of over 100,000; by the first census (1790) of about 238,000. It grew at the rate of 12,000 to 15,000 in each decade until 1840, the increase of numbers from that time on being much more rapid. The census of 1910 shows a population of 1,114,756.

References: Z. Swift, *A System of the Laws of the State of Connecticut* (1795–6); B. Trumbull, *History of Connecticut* (1798, 1818); D. Loomis and J. G. Calhoun, *The Judicial and Civil History of Connecticut* (1895); S. E. Baldwin, "The Three Constitutions in Connecticut" in New Haven Colony Historical Society, *Papers*, 1894, V, 179, "*The Secession* of Springfield from Conn." in Colonial Society of Mass., *Publications*, 1908, XII, 55; C. M. Andrews, "The Conn. Intestacy Law" in *Yale Review*, Nov., 1894, "The Origin of Conn. Towns" in Am. Acad. of Pol. and Soc. Sci., *Annals*, Oct., 1890; N. P. Mead, *Conn. as a Corporate Colony* (1906); J. H. Trumbull and J. Hoadley, *Public Records of the Colony of Conn., 1636–1776* (1850–90).

SIMEON E. BALDWIN.

CONNECTICUT COMPROMISE. See FEDERAL CONVENTION.

CONQUEST, RIGHT OF. Conquest is the appropriation of the enemy's territory by military occupation; but occupation does not of itself operate to pass title to the conqueror. Title passes only when the intention of the conqueror to appropriate the territory is shown by formal annexation, and when his ability to keep it is proved by the express or tacit acquiescence of the state from which it is taken. The change from the old doctrine that military occupation immediately conferred the rights of sovereignty finds definite expression in the *Conventions Concerning the Laws and Customs of War on Land*, adopted at The Hague Conferences of 1899 and 1907, where the rights and duties of the military occupant are set forth in detail. The effects of completed conquest are as follows: (1) the conqueror takes over the ownership of all public property of the conquered territory, and assumes the local rights and obligations of the former sovereign; (2) the allegiance of the citizens of the territory is transferred to the conqueror, but it is the common practice of modern times to allow them the option to change their allegiance or to leave the country.

See ANNEXATIONS TO THE UNITED STATES; BOUNDARIES OF THE UNITED STATES, EXTERIOR; DECLARATION OF WAR; DRAGO DOCTRINE; MARITIME WAR; MONROE DOCTRINE; PRISONERS OF WAR; PRIVATE PROPERTY AT SEA; PRIZE LAW AND COURTS; TERRITORY IN INTERNATIONAL LAW; WAR, INTERNATIONAL RELATIONS OF; WARS OF THE UNITED STATES; diplomatic relations with countries by name; annexations of regions by name.

References: W. E. Hall, *Int. Law* (6th ed., 1909), 458–476, 560–565; H. W. Halleck, *Int. Law* (1861), 775–841.

JAMES BROWN SCOTT.

CONSCRIPTION AND DRAFT. Men were drafted from the colonial militia for service in the Canadian campaigns before 1761; and the Continental authorities were compelled to resort to conscription in 1776. This method of recruiting seems to be contemplated by the Militia Act of 1792 by which Congress made "every free, able-bodied, white citizen of the respective States" a member of the enrolled militia and liable to be called out for the national defence. The conscription acts of 1813 were, however, denounced as unconstitutional by Daniel Webster and other representatives of New England, and those of the Civil War period were opposed by the champions of state rights.

The failure of the states to forward either conscripts or volunteers to fill their quotas in 1862 resulted in the enactment of a general law for a draft under the supervision of provost-marshals appointed by the War Department. Lincoln had hoped that such a measure would fill the ranks of the old regiments since volunteers would enlist in new organizations only; and he thought that loyal men would be glad to furnish substitutes if those of opposite sentiments had to do likewise. The law was made unpopular by a clause allowing commutation for $300; and after alarming riots in New York and other cities, this proviso was repealed in 1864; but substitutes were accepted up to the end of the war. About 85,000 men paid commutation, and the number of substitutes was still larger.

The first duty of the provost-marshals in 1863 was to enroll all persons of military age (18 to 45) who were citizens or had declared their intention to become citizens; and a draft followed, in due course, unless the towns or cities completed their quota by engaging volunteers. Those liable to the draft also strove to procure substitutes; and by combined effort many districts escaped the draft. Of 159,000 soldiers from Massachusetts less than 1,200 were conscripts; and the total number produced by the drafts of 1863 and 1864, after deducting the physically unfit, did not exceed 20,000. Still, the conscription acts did much to stimulate recruiting; the substitute clause led to the enlistment of many aliens; and the inclusion of negroes, slave or free, drew large contingents from the border states.

See Bounties to Soldiers and Sailors; Enlistment, Naval and Military; Military Service, Compulsory; Soldiers and Sailors, Legal Status of; Substitutes, Military; Volunteers.

References: J. B. Fry, *N. Y. and the Conscription* (1885); J. G. Nicolay and J. Hay, *Lincoln* (1890), VII, 2–7, 29, 34; A. Lincoln, *Works* (1894), II, 24; J. F. Rhodes, *Hist. of the U. S.* (1899), IV, 321, 330; W. Schouler, *Mass. in the Civil War* (1871), II, 24; E. Upton, *Military Policy of the U. S.* (1907), 67, 123, 438–443; C. H. Van Tyne, *Letters of Daniel Webster*, (1902), 67, 68; U. S. War Department, *Official Records* (1880–1901), Series III, Vols. III, 88–93, 321, 338, 347, 391, 888; IV, 472–475, 1225, 1270; V, 599, 611, 615, 652, 740, 749.

C. G. Calkins.

CONSERVATION

Application.—The term "conservation" as applied to a system of public policy was first used about 1908. In effect it means three different though closely related things: (1) that material possessions and advantages now in the hands of the National Government shall be administered for the general benefit, instead of being transferred to private agencies; (2) that the natural resources of the country, whether public or private, shall be administered with some reference to the interests of later generations; (3) that the bounties of nature shall not be extracted in a haphazard or wasteful manner.

Public Lands.—The question came first into public view out of a rising public sentiment against the established administration of the public lands. Ever since 1780 it has been the expressed purpose of the National Government to transfer the ownership of the public domain to individuals. That policy was steadily pursued down to about 1890 by the following methods: (1) lands were sold on low terms to various kinds of purchasers; (2) lands were granted to individuals in military bounties, and after 1862 as homesteads; (3) lands were given to the states for education and other state purposes; (4) lands were bestowed on states or directly on corporations, for the construction of canals and railroads.

The result was that nearly all the arable land that belonged to the Government was, by 1890, out of its hands, leaving nearly all Alaska and vast areas of mountain and desert in the public domain. Unfortunately the Government, until 1910, never made a proper classification of lands, under which only tillable areas should be transferred to presumptive farmers. Lands useful only for grazing ought to have been sold in large tracts with access to water for the stock; and all mineral and timber lands should have been held out for special treatment.

Inasmuch as practically the whole of the original United States, except the northwestern prairies, was heavily wooded and had to be cleared, there seemed for many years no reason for treating timber lands as especially valuable; and bounty land and other grants could be located on valuable timber tracts. Partly by collusion and fraud, great areas of timber land have come into a few hands, and immense cattle ranches have been brought together which frequently monopolize the water and thus control large areas of Government land to which they had no title. In some cases public land has actually been illegally fenced in, and the public treated as trespassers.

Some steps were taken to save the timber for the people by the act of June 3, 1878, under which timber land was held at a special price. In 1891 began the system of reserving forest lands, and by 1909 nearly 200,000,000 acres had been reserved, though considerable

parts of this land had, at the time, no trees growing upon it. Beginning in 1878 restrictions were placed on the previous practice of cutting timber for private use (especially for mines) on Government land. Since 1881 there has been a permanent Government forest service, primarily for the care of the Government forests, but working also for the protection from fire of both the public and private forests.

As timber became more valuable, various forms of fraud were perfected for getting possession of timber land, particularly the location of the extra sections due to the railroads under their land grants. By 1907 the issue was squarely joined whether the Federal Government would indefinitely hold a large area of public forests. In general the eastern people were the first to be aroused to the great value of the forest lands; and the small claimant in the West was the first to feel the pressure of the large concerns which were getting possession of lands.

A decided opposition arose in the Far West both to a forest policy and to too elose an examination of the corporate claims and holdings; part of the farming element wanted to see as much as possible of the forests cleared for cultivation; heavy users of timber complained that their supply was withheld; some people felt that it was unreasonable to put a check on the opportunities of private gain which had been freely enjoyed in the development of states farther to the east. By 1911, it became clear that Congress would not release any of the safeguards against the forestalling of land by corporations and other large owners; that the forest policy would be continued; and that mineral rights on the public land would be reserved.

Irrigation.—The question of conservation was complicated by the well known fact that considerable areas of public land which had never been taken up, could be made available by irrigation. Systems of artificial water supply for crop growing were older than the European settlements and were worked out on a large scale in Utah, Nevada, California and in other communities supplied by streams from the Rocky Mountains or the Sierras. Most of the upper waters of the rivers lay in public forests or mountains, and therefore were still in the hands of the Government. To store the winter rain or snowfall for summer use would make available otherwise worthless lands.

By the Newlands Act of June 17, 1902, Congress provided for building irrigation systems, to be paid for out of the proceeds of the lands benefited. These new plans, in general, did not disturb previous users of water under private or state systems; but added that much to the soil available for culture. For that reason this policy was almost universally popular; but it committed the Government to the indefinite retention of the catchment areas: the irrigated lands are to be sold, but the source of water supply must be held. The rain would still fall if it went into private hands; but there is a wide-spread belief, upon which eminent scientific authorities differ, that forests increase, or at least, help to hold the rainfall.

Water Powers.—These mountain basins include numerous rapids and waterfalls, sometimes of considerable streams, and the existence of this power creates another field of conservation. Up to about 1905 the water powers the country over had gone to the people who secured the water fronts which controlled them; and enormous powers like that at Spokane were thus easily monopolized. The new question now arose whether the United States would permit the private use of water powers, either within forest reservations or elsewhere on lands not yet taken up by claimants. It is altogether likely that some general system will be adopted by Congress under which the ownership and control, if not the actual use, of all water powers still on the Government domain, shall be reserved to the Government.

Mineral Lands.—The early mining camps made rules of their own for obtaining and preserving title to limited areas of placer or lode. State laws followed, confirming and enlarging these rules. The United States, by statute, provides for the taking up of limited areas of mining property on government land and for the conditions under which such a title can be kept alive. The underlying idea of this legislation, however, is that mining properties are to be disposed of, rather than that they are to be retained for equal distribution or for later generations.

Except for a feeble and wholly unsuccessful attempt to get a small royalty from the lead mines in the Northwest, and for an act increasing the price of lands known to contain coal, Congress has made little attempt to assert a special governmental interest in minerals. In fact very large areas of coal lands have been located as arable or even desert lands, and have gone out of the hands of the Government. The question was sharply presented in 1908 first with reference to certain coal claims in Alaska, where it was charged that capitalists had organized a system of private claims which were to be brought together into a mineral estate; and secondly, in the discovery of fraudulent entries of coal lands by railroads and others in the Rocky Mountain regions. The Alaskan difficulty was not settled down to 1913; but by an act of June 22, 1910, Congress authorized the entry of tracts of land suitable for cultivation, reserving the mineral contents to the Government. This is the beginning of a new system by which the United States will follow the example of many European countries in saving at least a part of the value of the mineral wealth for the public.

Conservation Propaganda.—To enlighten the public mind on these matters a National Con-

servation Association was formed in 1909. Besides concentrating attention on the national public domain this movement also urges on the states the use of their powers to prevent monopolies in forests and water powers; to arrest, if possible, the exhaustion of the soil; and, in general, to prevent the waste of natural wealth. March 1, 1911, Congress passed an act for the purchase of tracts of land in the Appalachian mountain system, which were presumed to protect the sources of navigable streams and thereby to preserve the navigability of the lower streams.

The whole conservation movement is part of the general effort to prevent the resources of the country from passing under the control of a few persons. At the same time it indicates a more scientific and statesmanlike attempt to make the most of the gifts of nature, by preventing their misuse. In the political campaign of 1912 conservation was hotly discussed.

See Coal Lands; Desert Lands; Forest Service; Irrigation and Irrigated Lands; Land Office of the United States; Mineral Land; Power for Industry; Public Lands and Public Land Policy; Public Lands, Reservation of; Real Estate, Public Ownership of; Timber Lands.

References: *Am. Year Book, 1910*, 39–44, 293, 309, and year by year; P. J. Treat, *National Land System* (1910); A. B. Hart, *Actual Government* (rev. ed., 1908), ch. xviii; U. S. National Conservation Commission, *Reports* (beginning 1908); U. S. Dept. of Agriculture, *Declaration of Governors for Conservation* (1908); Am. Forestry Ass., *The Forester* (organ) year by year; Gifford Pinchot, *Conservation of Nat. Resources* (1908), *Fight for Conservation* (1910); W. E. Weyl, *New Democracy* (1912); C. R. Van Hise, *Conservation of Natural Resources in the U. S.* (1911); A. C. Beard, *Am. Government and Politics* (1910), ch. xx; bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), § 273; A. B. Hart, *Manual* (1903), § 116 (Lect. 6). Albert Bushnell Hart.

CONSERVATIVE PARTY IN ENGLAND. The conservative party, like the Liberal party (*see*) has gone through three stages since the French Revolution; and in its third and present stage it has been obviously affected by the changes in the Liberal party that came with the break-up in the party that followed Gladstone until he introduced his home rule bill of 1886. The first of these stages extended from the French Revolution to the break-up in the Conservative party over the repeal of the corn laws by Peel in 1846. The name Conservative was substituted, or partly substituted for Tory after the enactment of the Reform Bill in 1832; but the change of name brought with it no great change in the principles and characteristics of the Conservative party of the period between 1832 and 1846. The opposition of the Conservative party of this period to any change was as pronounced and as persistent as it was in the days of Pitt, Castlereagh and Wellington; and from 1832 to 1846 the Conservatives remained the champions of the Established Church and its privileges, the guardians of the vested interests of the old municipal corporations and of the political and economic privileges of the landed class.

The second stage—1846–1886—was the era of Disraeli, who more than any other leader of this period must be credited with the upbuilding of the Conservative party after the disruption and demoralization resulting from the repeal of the corn laws. The principles and aims of the Conservative party of this period were described by Disraeli in the House of Commons within a year of the formation of Disraeli's second and last administration—that of 1874–1880. In this speech of March 20, 1873, Disraeli used the older term Tory and in describing the position of the party at the time he declared that it occupied the most satisfactory position that it had held since the days of Pitt and Grenville. He said:

> It has divested itself of those excrescences which are not indigenous to its native growth. We are now emerging from the fiscal period in which all the public men of this generation have been brought up. All the question of trade and navigation, of the incidence of taxation and of public money are settled. But there are other questions not less important and of a deeper and higher reach and range which must soon engage the attention of the country. The attributes of a constitutional monarchy, whether the aristocratic principle shall be recognized in our constitution, and if so in what form, whether the commons of England shall remain an estate of the realm, numerous but privileged and powerful, or whether they shall degenerate into an indiscrimiate multitude; whether a national church shall be maintained and if so what shall be its rights and duties; the functions of corporations, the sacredness of endowments, the tenure of landed property, the free disposal and existence of any kind of property—all those institutions and all those principles which have made this country free and famous and conspicuous for its union of order with liberty are now impugned and will, in due time, become great and burning questions. I think it is of the utmost importance that when that time arrives, there shall be in this country a great constitutional party distinguished for its intelligence as well as for its organization which shall be competent to lead the people and to direct the public mind.

Disraeli abandoned the protectionist principles of the Tories. He declared that protection was not only dead but damned, although from 1846 to 1851 the Tory party had been intent on reënecting the corn laws. It was Disraeli's first administration—1866–68—that was responsible for the second extension of the franchise in 1867. This bill brought the working classes in the boroughs within the parliamentary electorate, and thereby made inevitable the third extension of 1884 which established the democratic franchise on which the House of Commons is now elected. Disraeli was then responsible for the widest departure from the principles of the older Toryism by which the history of the Conservative partry was marked until in 1888 the Salisbury

Conservative government created the existing county councils elected on a democratic franchise and thereby ended the old system under which county government was in the hands of the landed class.

With the inclusion of the Whigs and Liberal Unionists in the Conservative party in 1886 the third stage began. At first there was an alliance only between the Conservatives and the Liberal Unionists. After the general election of 1895 Liberal Unionists were of Conservative administrations; and before the end of the Conservative régime of 1895–1905 the distinction between Conservative and Liberal Unionists had disappeared and the merging was complete. From 1886 to 1905 the Conservative party evinced some of the characteristics of the Disraeli era, and also some of the reactionary characteristics of the period of 1793–1832. It was responsible, as has been stated, for the reform of county government in 1888; and in 1897 a Conservative government carried through Parliament the Compensation to Workmen's Act, the most socialistic measure on the statute book until the Old Age Pension Act was passed by a Liberal government in 1908. The reactionary measures of the Conservative régime of 1899–1905 were the act of 1902 abolishing the school boards and providing for aid for church schools from the municipal and imperial treasuries, and the act of 1904 that created a statutory vested interest in liquor licenses. Another departure of recent Conservatism is the propaganda since 1903 for a return to protection. This was the first time in its history that the Conservative party committed itself to a continuous aggressive propaganda. Its policy hitherto had been to oppose all change or to commit itself to reform, as it did in 1867 and again in 1888, only when Liberal and Radical propaganda had made reform inevitable. In later years the Conservatives have been the party of Imperialism, and one of the objects of the propaganda for protective tariffs with preferences for the oversea dominions was to knit the colonies and the mother country more closely together. See LIBERAL UNIONISTS; LIBERALS; PARLIAMENT; PARTY GOVERNMENT IN GREAT BRITAIN; TORIES, BRITISH; WHIGS.

References: A. L. Lowell, *The Government of England* (1908); W. F. Monypenny, *Life of Benjamin Disraeli* (1910–1912); T. E. Kebbel, *A History of Toryism, 1783–1881* (1886).

EDWARD PORRITT.

CONSERVATIVES. The Conservatives or Johnson men were the adherents of President Johnson in his contest with Congress over the question of reconstruction (*see*). A call for a "National Union Convention" to meet at Philadelphia was made by the Johnson men. This party was made up of Unionists in the South opposed to Congress, some Republicans, and many northern Democrats. Its policies were to conciliate the South, and receive the southern members in Congress. The Conservatives played a rather important part in the South where for a time they took the old name of "Constitutional Unionists," and their opponents the term "Radicals." In Virginia, the Conservatives gained control of the legislature in 1869. It was through Grant's influence that this state was taken back into the Union with a Conservative legislature. The case of Georgia was different. A Conservative legislature was elected in 1868. It complied with the acts of Congress on reconstruction, but the Conservative Senators were not received. The Conservatives elected presidential electors, but no decision was made whether or not the vote of Georgia should be counted. Georgia was not permitted to have members of Congress until the Conservatives were excluded from the state legislature. See RECONSTRUCTION; REPUBLICAN PARTY. References: W. A. Dunning, *Reconstruction* (1907), 71 *et seq.*; J. F. Rhodes, *Hist. of U. S.* (1904), V, 611 *et seq.*

T. N. H.

CONSPIRACY. A combination of two or more persons to accomplish jointly some unlawful act or purpose, or some act not itself unlawful by unlawful means. H. M. B.

CONSTABLE. The constable is an administrative officer elected or appointed as a peace officer in the town, township, precinct, county, or parish—although at various times he has had many other minor duties. In the statutes his duties have been defined to include the bringing to justice of "all felons and disturbers of the peace." He must obey the orders of the court which he serves; and at present he is the ministerial officer of the justice of the peace. He may serve as the assessor or collector of taxes; or he may serve local boards in carrying out their instructions. In some jurisdictions he is regarded as both a township and a county officer. He is among the first of the local officers to be chosen in a new territory, where he is either appointed by the governor directly or by some local governing body. In the New England town the constable has always been chosen in town meeting. Elsewhere, at present (1913) he is generally chosen by popular vote. See COERCION OF INDIVIDUALS; CONSTABULARY, STATE; ORDER, MAINTENANCE OF; RURAL POLICE; TOWNS AND TOWNSHIPS. References: E. Channing, "Town and County Government" in Johns Hopkins University, *Studies* (1884), 45, 471; G. E. Howard, *Local Constitutional Hist.* (1889), I, 89, 112, 128; statute laws of the several states. B. F. S.

CONSTABULARY, STATE. One of the most persistent defects of American government is the lack of a proper machinery for keeping the peace in rural districts. No state

in the Union has ever followed the example of European countries by setting up an organized police force, uniformed, officered and drilled, the members distributed through the rural sections. The usual system is that of local constables elected by popular vote, often weak, ignorant and unable to cope with criminals. This is the main reason for the discreditable train robberies, rescues of prisoners and lynching (*see*) which, when they happen in other countries, Americans consider the work of banditti.

One state in the union has created a state police force, commonly called the Pennsylvania State Constabulary. It was organized in March, 1906, on the general model of the Canadian northwestern mounted police. The force, up to 1912, consisted of four troops of fifty men each; and twenty-eight officers. Each troop has barracks in one of the four headquarters. Most of the men have served in the United States Army; they are handsomely though simply uniformed, well drilled and armed. They patrol the neighborhood of their headquarters in pairs and are sent in bodies wherever there is disorder or the threat of disorder.

Twelve of the men have been known to quell a mob of seven hundred persons. In the first six years of their existence they made thousands of arrests and were called into Philadelphia in 1910, when the police force of the city could no longer keep order in a traction strike. Their principal service has been in turbulent mining districts. The annual expense of the force is about $250,000.

A similar organization has been proposed in South Carolina where in slavery times there was a voluntary patrol system; and some effort has been made to start a state constabulary in Nevada. The system is likely to spread throughout the Union.

See Coercion of Individuals; Execution of Process; Insurrections; Order, Maintenance of; Riots, Suppression of; Strikes.

References: Pennsylvania Department of State Police, *Annual Reports* (beginning 1907); *Nation*, XC, Mar. 24, 1901 281–282; bibliography in A. B. Hart, *Manual* (1903), §§ 250–253. Albert Bushnell Hart.

CONSTITUTION. A United States frigate of 44 guns, launched at Boston in 1797, won renown by her remarkable victories in the War of 1812, saved from being dismantled in 1830 by Oliver Wendell Holmes's poem *Old Ironsides* and finally was brought to Boston navy yards in 1897, where she now lies. See Old Ironsides. O. C. H.

CONSTITUTION FOLLOWS THE FLAG. This phrase, affirmatively stated, declares the doctrine that the limitations laid by the Federal Constitution upon Congress and the other departments of the National Government, apply immediately and *ex proprio vigore*, to all territories brought beneath the sovereignty of the United States. The phrase itself is somewhat misleading, as there has never been any question but that no federal authority over any districts whatsoever can be possessed or exercised except as justified by, and ultimately derived from, the Constitution. The only controversy has been as to whether certain of the limitations upon the powers of Congress imposed by that instrument necessarily apply when that body is legislating with exclusive reference to territories which have been annexed to and thus come under the sovereignty of the United States, but have not, constitutionally speaking, been "incorporated" into the United States. See Citizenship; Insular Cases; Territory, Constitutional Questions Concerning.

W. W. W.

CONSTITUTION IN THE BRITISH SENSE. De Toucqueville's phrase that "the English Constitution has no real existence" is only partly true. The British constitution is as real as that of the United States. The difference consists in this, that while, in the United States, there is a constitution definitely drawn up as such and changeable in a way different from that in which the ordinary laws are changed, in Great Britain there is no difference between the laws relating to the constitution and other laws. No provision is made for any such thing as a convention to consider and adopt constitutional changes; a law altering fundamentally the status of the House of Lords is enacted by exactly the same process as a law creating a protective tariff. The British constitution is made up of the whole body of British law relating to government. In addition to this, unwritten custom determines certain practises of the constitution. A parallel to this feature of the British system is to be found in the Constitution of the United States. It gives authority to the electors chosen by the people to name the President. These electors, however, are not now free in their choice but are bound by the unwritten law that they must vote for the candidate of the party whom they represent. Similar conventions find place in Great Britain. In theory the King carries on the executive government but in reality the Prime Minister (*see*) and the Cabinet (*see* Cabinet Government in England), who command a majority in the House of Commons (*see*), in the name of the King. Neither Prime Minister nor Cabinet is known to the written law. The fundamental principle of the British constitution is that Parliament is supreme and absolute. There is no other authority to question this supremacy. If Parliament enacts a law, the judges will enforce it, no matter how unreasonable or arbitrary it may be. The United States Congress, on the other hand, exercises powers limited under the written Constitution and may be

restrained if it goes beyond its defined authority. See CONSTITUTION, LAW AND CUSTOM OF; CONSTITUTIONS, CLASSIFIED; HOUSE OF COMMONS; LAW, CONSTITUTIONAL, AMERICAN; PARLIAMENT. References: W. Bagehot, *The English Constitution* (1st ed., 1872); A. L. Lowell, *The Government of England* (1908), I. 1–15; W. R. Anson, *Law and Custom of the Constitution* (1897–1908), A. V. Dicey, *Intro. to the Study of the Law of the Constitution* (6th ed., 1902). GEORGE M. WRONG.

CONSTITUTION, LAW AND CUSTOM OF. Though in the British system no distinction is made between constitutional and other laws there are certain acts of Parliament which define the fundamental character of the constitution. Chief among these are Magna Charta (1215), the Bill of Rights (1689), the Act of Settlement (1701), and the Parliament Bill (1911). These acts define and limit the powers of the King and of the House of Lords, and affirm certain fundamental rights of the people. There are other laws constitutional in character, and these make up the law of the constitution. Upon a question of law the courts are the arbiters, and any violation of the law of the constitution could be made the ground of an appeal to the courts.

The custom of the constitution has no explicit legal sanction but is the result of convention derived from long practice. At one time the King carried on the government, sat in person in council with his ministers, and directed their policy. Parliament made the laws but the King administered them. In time, however, the King found that he could carry on the government only with the support of Parliament, which had the control of legislation and of the public purse. Since the King could do only what Parliament would consent to do, he came to depend upon advisers who could control Parliament, and, in time, he chose his ministers from the party dominant in the stronger of the two chambers of Parliament, the House of Commons. The King's ministers or cabinet thus determined the King's policy. In time, the King absented himself from their meetings. The Prime Minister (*see*) took his place as chairman of the Cabinet and thus became the real head of the government. No law was passed conferring upon him any authority, and the relations between him and the King are regulated by custom. So, also, are those under which one Prime Minister must give place to another. Some of the customs or conventions of the constitution are that the King must act on the advice of his ministers; that the ministers who cannot command a majority in the House of Commons must resign; that the ministry should make no treaty which will not be approved by Parliament. The former custom of the constitution giving the House of Commons authority greater than that of the House of Lords was changed to the law of the constitution by the Parliament Bill of 1911. See CABINET GOVERNMENT; CABINET GOVERNMENT IN ENGLAND; CONSTITUTION IN BRITISH SENSE; CONSTITUTIONAL CONVENTION; HOUSE OF COMMONS; PARLIAMENT. References: A. V. Dicey, *Intro. to the Study of the Law of the Constitution* (6th ed., 1902); W. R. Anson, *Law and Custom of the Constitution* (1897–1908); A. L. Lowell, *The Government of England* (1908), 1–15. GEORGE M. WRONG.

CONSTITUTION MAKING IN THE UNITED STATES

Number of Constitutional Conventions.—Writing in 1887, Judge Jameson said that one hundred and ninety-two conventions had been held, and that one hundred and nineteen of these had matured constitutions or constitutional amendments which had gone into effect. Since 1887 nineteen constitutions framed by conventions have gone into effect, of which ten were of states newly admitted to the Union; amendments to the constitution of New Hampshire were proposed by constitutional conventions in 1902 and 1912, some of which were adopted; in Connecticut a constitution proposed by a convention assembled in the same year was rejected; and a complete constitutional revision proposed in Rhode Island in 1898 and 1899, not by a convention but by the legislature, twice failed of adoption by the people, but an amendment proposed by the legislature in 1912 provides for the holding of a constitutional convention in 1915, and every ten years if the people so desire. The fourth constitutional convention of Ohio, authorized by popular vote at the November elections of 1910, assembled Jan. 9, 1912, and upon its adjournment on June 1 it had agreed on 42 amendments to the constitution, of which 34 were approved by the people on September 3, 1912.

Process.—In the process of constitution-making and alteration two methods are used: (1) the constitutional convention, which is ordinarily employed for the complete revision of state constitutions or for the framing of new constitutions; (2) the proposal of specific constitutional amendments through the regular legislative machinery, this including in a number of states the popular initiation of proposed amendments. During the past two or three decades the use of this second method has greatly increased, and in a discussion of constitutional development this fact must be borne in mind. During the decade 1899–

1908, four hundred and seventy-two constitutional questions were submitted to the people of the several states, of which less than fifteen related to the calling of conventions or to proposed complete constitutions. Frequent amendments in many states bring about constitutional changes as great as those wrought by conventions in others.

Length of Constitutions.—Through these two methods of constitutional change, much matter is placed in the fundamental law of the states which is really of a legislative character. The constitutional convention and the process of constitutional amendment must be counted upon as important legislative processes, not only for matters of fundamental importance but also for matters not properly fundamental in character. The increasing importance of constitutional legislation is reflected directly in the steadily growing bulk of our state constitutions. The earlier state constitutions were comparatively short, and contained little except a framework of government; many of the later constitutions are long and are filled with provisions as to matters not fundamental in character. Mr. Bryce's statement is perhaps familiar to many readers:

> Virginia put her first Constitution, that of 1776, into four closely printed quarto pages, that is, into about three thousand two hundred words. In 1830 she needed seven pages; in 1870, twenty-two pages, or seventeen thousand words; her latest (1902) has thirty-five thousand words. Texas has doubled the length of her constitutions from sixteen quarto pages in 1845 to thirty-four in 1876. Pennsylvania was content in 1776 with a document of eight pages, which for those times was a long one; she now requires twenty-three. The constitution of Illinois filled ten pages in 1818; in 1870 it had swollen to twenty-five. These are fair examples but the extremes are marked by the constitution of New Hampshire of 1776, which was of about six hundred words (not reckoning the preamble), and the constitutions of Missouri of 1875 and of South Dakota of 1889, which have each more than twenty-six thousand words. Even there were surpassed by Oklahoma, whose constitution of 1907 exceeded thirty-three thousand words, and by Louisiana, whose constitution of 1898 has forty-five thousand.

There are exceptions to this tendency, for the constitution adopted by Michigan in 1908 confines itself rather closely to matters which may properly be termed constitutional, and is not as long as the constitutional documents recently framed by other states.

Quality of Constitutional Legislation.—The increased complexity of state constitutions, and especially the inclusion in them of many matters not fundamental in character have made frequent alteration necessary, and in the greater number of the states the amendment or revision of state constitutions may now be accomplished without great difficulty. It has frequently been said that abler men may be obtained as members of constitutional conventions than as members of state legislatures, and that the quality of constitutional legislation is therefore superior to that of ordinary legislation. This is to a certain extent true, because public attention is to a greater extent centered on the election of delegates to a convention, and because the task is a superior one involving generally no petty political considerations, and because able men who would decline to serve in the legislatures may be persuaded to become members; but the superior quality of a convention's work is due in large part to the fact that the convention confines its attention to the one task of framing a constitution and is therefore able to do better work than a legislative body, which is probably considering hundreds of distinct measures during a session of perhaps the same length as that of a convention. Constitutional amendments proposed by legislative bodies probably cannot be said to be superior to ordinary legislation either in quality or draftsmanship.

The preceding discussion has related to methods of constitutional change and to the external features of constitutional development in the United States. The remainder of this article will be devoted to the internal features of constitutional development—to an effort to indicate briefly the more important tendencies in our constitutional development.

Development of the Departments of Government.—In the first state constitutions the legislatures occupied a predominant position. The struggles of the colonial period between a popularly elected assembly on the one side and the governor (who controlled the council as an upper legislative body and the courts), on the other hand, naturally led the framers of new constitutions for independent states to distrust the executive branch of the government and to concentrate almost full powers in the hands of the legislative bodies. The first sixty years of constitutional development were largely a period during which there was a readjustment of the equilibrium as among the three departments of government.

In most of the earlier state constitutions provision was made for the election of the governnor by the legislature, and executive councils dominated by the legislatures further restricted the executive power in a number of the states. The governor possessed little power of appointment, for most important offices were filled by the legislature, and under the first state constitutions his control over legislation was very slight. But a distrust of the legislature soon arose, in part because of the large powers which it had, and in part because it exercised these powers unwisely. The New York constitution of 1777 made the governor a popularly elected officer, as did the Massachusetts constitution of 1780 and the New Hampshire constitution of 1784, and practically all state constitutions after this period adopted the policy of popular election, the Virginia constitution of 1830 being a notable exception to this statement. A lengthening term of office at the same time gave the governor greater opportunity to exercise his powers, as

did also the discarding by most states of the cumbersome and ineffective executive council. With respect to the important executive offices of the state, the power of the governor in most cases was not greatly increased but the power of the legislatures and their control over the executive was reduced by making such officers elective directly by the people—a movement whose influence may be traced by a comparison of the Michigan constitutions of 1835 and 1850. By the New York constitution of 1777 the executive appointing power was large but was confined largely to a council of appointment whose members were, during much of the time, out of harmony with the governor. This council of appointment disappeared in New York in 1821, and the governor's appointing power has gradually tended to increase throughout the United States—by virtue of the fact that the state governments have steadily become more complex and have assumed new functions, thus increasing the number of appointive officers, although in the more progressive states the tendency is now to introduce and extend the merit system for the selection of large classes of subordinate officers.

There has also been a steady increase in the governor's power over legislation. Of the earlier state constitutions that of South Carolina (1776) vested an absolute veto in the president of the state, but this power was only once sought to be exercised and was withdrawn by the constitution of 1778. The New York constitution of 1777 provided a council of revision, of which the governor was a member, which should have a suspensory veto, and plans somewhat similar to that of New York giving a supervision over legislation to the judiciary were suggested but not adopted in other states. The Massachusetts constitution of 1780 was the first to give the governor acting alone a suspensory veto over legislation which might be overcome by action of an extraordinary majority (two-thirds) in the legislative houses. The New Hampshire constitution of 1784 was largely copied from that of Massachusetts, but the provision for an executive veto of legislation was rejected by New Hampshire. The provision of the Federal Constitution of 1787 with respect to the presidential veto has been followed in principle by most of the subsequent state constitutions. Georgia (1789), New Hampshire (1792) and Kentucky (1792) followed the federal precedent in giving their governors a veto power; New York abolished its council of revision in 1821 and conferred this power upon its governor acting alone. As the states adopted new constitutions it became usual for the veto power to be conferred, and although several states have only recently conferred upon their governors a negative over legislation, North Carolina to-day is the only state whose governor has no veto power (1913).

The governor's veto power over legislative action has been so extended that in more than two-thirds of the states he now also has power to veto separate items in appropriation bills; the constitution of Washington in addition confer upon the governor power to veto any section or sections of a bill presented to him, and to approve other portions of the bill so presented (*see* VETO POWER).

The executive department has thus, in its organization and powers, become stronger, and its gain in power has been largely at the expense of the legislature. Somewhat the same development has taken place with respect to the judicial department. In most of the first constitutions the judges were chosen by the legislative bodies, although in several states there was executive appointment, subject to confirmation by the executive council or upper branch of the legislature. The power of appointment was, in most cases, gradually taken from the legislature; this power, in some states was at first conferred upon the governor, but the movement for popular election, which gained force from 1830 to 1850, has extended popular choice to judicial as well as to executive officers. The legislative power of impeachment has continued in the states, and to it has been added, in a number of cases, an executive power of removal upon address by the legislative bodies.

But the most important power acquired by the judicial department in this country has been that of declaring invalid laws which in the opinion of the judges conflict with the constitution. The exercise of this power was not contemplated by the earlier constitutions, but the courts, which in our earlier state governments really occupied a subordinate position, were able to assume such power, largely because of the early-developed distrust of the legislatures, and of the feeling that some check upon legislative power was needed. The judicial power over legislation, once established, has steadily grown, in part by the assumption by the courts on their own motion of more extensive and detailed supervision over legislation, and in part, also, because the state constitutions have steadily added an increasing number of limitations upon legislative action, such limitations being subject to judicial enforcement, under the theory of judicial control as to the constitutionality of legislation (*see* COURTS AND UNCONSTITUTIONAL LEGISLATION).

Limitations upon Legislative Power.—Reference has already been made to the fact that constitutional legislation has steadily increased in the states at the expense of ordinary legislation—that through revision or amendment much matter properly of a statutory character has been introduced into the state constitutions, thus limiting the power of the regular legislative bodies. In addition, legislative power is strictly limited by a series of specific prohibitions introduced into the constitutions.

Legislative abuse of power has been, in large part, responsible for this increasing group of positive limitations upon legislative action, but the legisaltive bodies cannot be altogether blamed. The first series of important limitations may be said to have resulted from the state internal improvements movement which gained force after 1830. The people of many states were carried away by a wild frenzy for internal improvements to be constructed at state expense, and plans often immature and impracticable were forced upon state legislatures; failure was almost sure to result (*see* INTERNAL IMPROVEMENTS). As a result of unwise plans adopted by the states during the period from 1830 to 1850 practically all of our constitutions now have strict limitations upon state indebtedness. "As the people had driven their representatives to enter upon internal improvements without caution, so, when taxes began to press, they censured them without justice, and disowned the policy" (H. C. Adams, *Public Debts*, 339).

The states having excluded themselves from the field of internal improvements, their place was taken by private corporations. These private corporations, in their turn, appealed for financial aid to the minor civil divisions of the state upon whom no constitutional limitations had yet been placed, and which might aid railroads and other enterprises either under their general powers or under powers conferred for that purpose by the legislatures. The legislatures here again yielding to popular pressure permitted the civil divisions of their states to loan their credit heavily to projected railways and other similar enterprises. Here, too, unwise management brought financial disaster, and as a result constitutional limitations were adopted by which municipalities and other local divisions of the states are forbidden to loan their credit in aid of such enterprises and to incur indebtedness beyond certain fixed limits.

In a somewhat similar manner the early banking experiences of the states—and especially the abuses arising out of state participation in banking and out of the legislative grant of bank charters—produced a series of constitutional limitations upon the passage of state banking laws. In the cases just referred to the legislatures acted unwisely, but they acted under pressure of the people, and cannot be held entirely responsible for the abuses which resulted. The people insisted upon legislative policies which resulted in disaster and then, after the injury had been done, they imposed strict limitations upon their legislatures.

In many matters, therefore, limitations have been imposed upon legislatures as a result, not so much of legislative incompetency or corruption, as of actions resulting from popular pressure. But other classes of limitations have been the direct result of abuses for which the legislatures alone were primarily responsible—such as favoritism in granting charters to private companies, passage of local and special legislation, etc. And on account of abuse of power by legislative bodies we now have a series of strict limitations upon local and special legislation and upon the method of legislative action (*see* CONSTITUTIONS, STATE, LIMITATIONS IN).

These limitations, which have been steadily increasing in number, have steadily decreased the power and influence of legislative bodies. And the popular distrust of legislatures, fostered in part by measures enforced by popular sentiment, and in part also by the incompetence of the legislatures themselves, has caused the adoption of constitutional provisions limiting the terms of legislative sessions, and providing that such sessions should be held biennially (and in Alabama quadrennially) rather than annually, as under earlier constitutions.

Popular Share in Legislation.—During the past fifteen years there has been a pronounced tendency to reduce legislative power still further through the introduction of the initiative and referendum. Up to January 1, 1913, 17 states have adopted the initiative and referendum or some form of these institutions for ordinary legislation, and Michigan has adopted an initiative for constitutional amendments. Nevertheless, the initiative and referendum cannot, it seems, supersede the regular legislative organs and must remain in large part as extraordinary instruments of legislation (to be employed as superior to the legislature and to force legislation upon matters with respect to which the regular legislative bodies have failed or declined to act—somewhat in the manner that constitutional legislation has heretofore served); but the introduction of these institutions must necessarily diminish the importance of the legislative organs of the states (*see* INITIATIVE; LEGISLATION, DIRECT; REFERENDUM).

Popular Participation in Government.—The introduction of the initiative and referendum involves a greatly increased popular share in the legislation of the states, but this is only one step in a movement toward greater popular participation in government which has been going on since the establishment of independent states. The American Revolution was, in its early stages, a democratic movement, and in several states led to an extension of the suffrage and to the reduction of property qualifications for the holding of offices, but our first state governments were confined, in great part, to the propertied classes. The following steps may be pointed out as tending toward greater popular participation in government: (1) the extension of suffrage and abolition of property qualifications for voting—a movement which gained force after 1800 and which became triumphant during the first three decades of the nineteenth century, although Virginia held out until 1850; (2) the somewhat similar move-

ment for the abolition of property qualifications for office, which covered the same period; (3) the movement which led to the selection of the more important state and local officers by popular vote, as a substitute for their appointment by the legislature or by the executive. This movement has been referred to above in connection with the choice of executive and judicial officers. This development took place in large part during the second quarter of the nineteenth century; (4) the movement for municipal home rule—for the framing of charters by cities or local divisions themselves—a movement which began in Missouri in 1875 and which has spread to a number of other states since that time. This movement involves a diminution of state legislative control over cities; (5) the movement for the popular recall of state and local officers—a movement which may be said now to be at its very beginning (*see* RECALL).

See CONSTITUTIONAL CONVENTION; CONSTITUTIONS, STATE, AMENDMENT OF; CONSTITUTIONS, STATE, CHARACTERISTICS OF; CONSTITUTIONS, STATE, LIMITATIONS IN; FEDERAL CONVENTION.

References: J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, 427–463; J. Schouler, *Constitutional Studies* (1897); F. N. Thorpe, *Constitutional Hist. of the Am. People, 1776–1850* (1898), I, ch. ii, iii, II, ch. xiii; J. Q. Dealey, *Our State Constitutions* (1907); F. J. Goodnow, *Administrative Law of the U. S.* (1905), 94–109; H. Davis, *Am. Constitutions* (1885); H. Hitchcock, *Am. State Constitutions* (1887); *Am. Year Book, 1911*, 180 *et seq., ibid, 1912*, 63 *et seq.*, and year by year.

W. F. DODD.

CONSTITUTION OF THE UNITED STATES, ADOPTION OF. See FEDERAL CONVENTION.

CONSTITUTION OF THE UNITED STATES OF AMERICA

(WITH REFERENCES TO EXPLANATORY ARTICLES)

We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America. See CONSTITUTION OF THE UNITED STATES, PREAMBLE TO; CONVENTION, FEDERAL; INSURRECTIONS; LAW, CONSTITUTIONAL, AMERICAN.

ARTICLE I.

SECTION 1.

1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. See CONGRESS; LEGISLATIVE POWER; REPRESENTATIVES; SEPARATION OF POWERS.

SECTION II.

1. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. See ELECTION SYSTEM IN THE U. S.; REPRESENTATIVES, ELECTION OF; SUFFRAGE.

2. No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen. See DOMICILE AND RESIDENCE; QUALIFICATIONS FOR OFFICE.

3. Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of Free persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of Ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every Thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. See APPORTIONMENT; CENSUS; TAXES, DIRECT.

4. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies. See VACANCIES; REPRESENTATIVES, ELECTION OF.

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole Power of Impeachment. See IMPEACHMENT; SPEAKER.

Section III.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote. [This clause has been changed by the Seventeenth Amendment.] See Senate; Senators; Seventeenth Amendment.

2. Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies. See Vacancies.

3. No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen. See Qualifications for Office.

4. The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided. See Vice President.

5. The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States. See President Pro Tempore.

6. The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. See Impeachment.

7. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section IV.

1. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators. See Election System in U. S.; Elections, Federal Control of; Representatives, Election of; Senators, Election of; Seventeenth Amendment.

2. The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day. See Session of Legislative Bodies.

Section V.

1. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of Absent Members, in such Manner, and under such Penalties as each House may provide. See Elections, Contested; House of Representatives; Quorum.

2. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two-thirds, expel a Member. See Expulsion; Rules of Congress.

3. Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one-fifth of those present, be entered on the Journal. See Journals of Legislative Bodies; Yeas and Nays.

4. Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting. See Adjournment.

Section VI.

1. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any speech or Debate in either House, they shall not be questioned in any other Place. See Mileage; Privilege, Parliamentary; Salaries.

2. No Senator or Representative shall, during the Time for which he was elected, be appointed to any civic Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased, during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office. See Appointment of Members of Congress to Office.

Section VII.

1. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills. See Appropriations; Revenue, Bills for Raising.

2. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such cases the Votes of both Houses shall be determined by yeas and nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law. See Bills, Course of; Legislative Output; Legislative Power; Veto Power; Yeas and Nays.

3. Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the case of a Bill. See Concurrent Resolutions, Resolutions in Congress; Resolution, Joint.

Section VIII.

1. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts and Excises shall be uniform throughout the United States. See Expenditures, Federal; General Welfare Clause; Imposts; Tariff; Tariff, Protective, Constitutionality of; Taxation.

2. To borrow Money on the credit of the United States. See Bonds; Borrowing Money.

3. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. See Commerce; Interstate Commerce and Cases; Interstate Commerce Commission; Interstate Commerce Decisions; Indians.

4. To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States. See Bankruptcy; Citizenship.

5. To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures. See Coinage and Specie Currency; Coining Money; Weights and Measures.

6. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States. See Counterfeiting.

7. To establish Post Offices and post Roads. See Parcel Post; Post Office; Post Roads; Postal Savings Bank; Postal System; Postal Union.

8. To promote the Progress of Science and useful Arts; by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries. See Copyrights; Patent Office; Patents.

9. To constitute Tribunals inferior to the supreme Court. See Courts, Federal System of; Judges, Federal.

10. To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations. See Piracy.

11. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water. See Marque and Reprisal; Prize Cases; Prize Law and Courts; War.

12. To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years. See Army; Military and Naval Expenditure; War, Department of.

13. To provide and Maintain a Navy. See Navy, Department of the.

14. To make Rules for the Government and Regulation of the land and naval Forces. See Education, Military and Naval; Military Discipline; Military Law; Military and Naval Expenditure.

15. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions. See Insurrections; Invasions; Militia.

16. To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress. See Militia.

17. To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Con-

sent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings. See DISTRICT OF COLUMBIA; MILITARY RESERVATIONS; POSTS, MILITARY; TERRITORIAL JURISDICTION OF UNITED STATES WITHIN THE STATES.

18. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof. See CONSTRUCTION AND INTERPRETATION; IMPLIED POWERS; MCCULLOCH VS. MARYLAND; NECESSARY AND PROPER; RESULTING POWERS.

SECTION IX.

1. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person. See CONSTITUTION OF THE UNITED STATES, COMPROMISES OF; SLAVE TRADE; SLAVERY; SLAVERY CONTROVERSY.

2. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it. See HABEAS CORPUS.

3. No Bill of Attainder or ex post facto Law shall be passed. See ATTAINDER; ATTAINDER, BILL OF; EX POST FACTO LAW; RETROSPECTIVE LEGISLATION.

4. No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken. [This clause has been changed by the Sixteenth Amendment.] See POLLOCK VS. FARMERS' LOAN AND TRUST CO.; SIXTEENTH AMENDMENT; TAXATION; TAXES, DIRECT, APPORTIONMENT OF; SIXTEENTH AMENDMENT.

5. No Tax or Duty shall be laid on Articles exported from any State. See TAXATION OF EXPORTS.

6. No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another. See PORTS, PREFERENCE TO.

7. No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time. See APPROPRIATION; REPORTS OF HEADS OF DEPARTMENTS.

8. No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State. See NOBILITY, TITLES OF.

SECTION X.

1. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility. See ATTAINDER, BILL OF; BILLS OF CREDIT; CONTRACT, IMPAIRMENT OF; DARTMOUTH COLLEGE CASE; EX POST FACTO LAW; LEGAL TENDER; MARQUE AND REPRISAL; NOBILITY, TITLES OF; STATES, COMPACTS BETWEEN.

2. No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress. See TAXATION OF EXPORTS.

3. No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay. See STATES, COMPACTS BETWEEN; TAX, TONNAGE.

ARTICLE II.

SECTION I.

1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected as follows. See EXECUTIVE POWER; PRESIDENT, AUTHORITY AND INFLUENCE OF; PRESIDENT OF THE UNITED STATES, CONSTITUTIONAL POWERS OF; VICE-PRESIDENT.

2. Each State shall appoint, in such Manner as the Legislature thereof may direct, a number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. See ELECTORAL COLLEGE; ELECTORS.

3. The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves.

And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no person have a Majority, then from the five highest on the List the said House shall in like Manner choose the President. But in chusing the President, the Votes shall be taken by States, the Representation for each State having one Vote; A quorum for this Purpose shall consist of a Members or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President. [This clause has been changed by the Twelfth Amendment.] See Electoral College; Electoral Count for President; Twelfth Amendment; Presidential Elections.

4. The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States. See Election System in United States; Presidential Elections.

5. No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States. See Qualifications for Office.

6. In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected. See Presidential Succession.

7. The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States or any of them. See Salaries.

8. Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will, to the best of my Ability, preserve, protect and defend the Constitution of the United States." See Oath of Office.

Section II.

1. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment. See Army; Cabinet; Commander in Chief; Executive Departments; Impeachment; Law, Administrative; Ordinances, Executive; Pardon; President, Authority and Influence of.

2. He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments. See Ambassadors; Appointments to Office; Civil Service; Consular Service; Inferior Officers; Judges, Federal; Ministers; Patronage; President, Authority and Influence of; Senate; Senate, Courtesy of; Treaties.

3. The President shall have Power to fill up all Vacancies that may happen during the recess of the Senate, by granting Commissions which shall expire at the End of their next Session. See Commissions to Public Officers; Vacancies.

Section III.

1. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and

expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States. See ADJOURNMENT; EXECUTIVE AND CONGRESS; EXECUTIVE AND JUDICIARY; EXECUTIVE POWER, THEORY OF; EXTRA SESSION; MESSAGES, EXCUTIVE; SESSIONS OF LEGISLATIVE BODIES.

SECTION IV.

1. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. See BRIBERY; IMPEACHMENT; TREASON.

ARTICLE III.

SECTION I.

1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office. See COURTS, FEDERAL; JUDICIARY ACTS; SALARIES.

SECTION II.

1. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. See ADMIRALTY AND MARITIME JURISDICTION; COHENS VS. VIRGINIA; COURT OF CLAIMS; COURTS AND UNCONSTITUTIONAL LEGISLATION; COURTS, FEDERAL; COURTS, FEDERAL, JURISDICTION OF; ELEVENTH AMENDMENT; EXECUTIVE AND JUDICIARY; JUDICIARY AND CONGRESS; MARBURY VS. MADISON; REMOVAL OF CAUSES; REPORTS OF JUDICIAL CASES.

2. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court sball have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. See COURTS, FEDERAL; COURTS, FEDERAL JURISDICTION OF; JUDICIARY AND CONGRESS; MARBURY VS. MADISON; STATES AS PARTIES TO SUITS; WORCESTER VS. GEORGIA.

3. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the trial shall be at such Place or Places as the Congress may by Law have directed. See IMPEACHMENT; JURY, PETIT; VENUE.

SECTION III.

1. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court. See TREASON.

2. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the life of the Person attainted. See ATTAINDER; CONFISCATION ACT; TREASON.

ARTICLE IV.

SECTION I.

1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof. See COMITY, INTERNATIONAL AND INTERSTATE; FAITH AND CREDIT; INTERSTATE LAW AND RELATIONS; JUDGMENTS.

SECTION II.

1. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. See INTERSTATE LAW AND RELATIONS; PRIVILEGES AND IMMUNITIES OF CITIZENS; UNITED STATES AS A FEDERAL STATE.

2. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the Executive Authority of the State from which he fled, be delivered up, to be removed to the State having Juris-

diction of the Crime. See EXTRADITION, INTERSTATE; INTERSTATE LAW AND RELATIONS.

3. No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due. See COMPROMISE OF 1850; FUGITIVE SLAVES; FUGITIVES FROM SERVICE OR LABOR; PERSONAL LIBERTY LAWS; SLAVERY CONTROVERSY.

SECTION III.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress. See STATES, ADMISSION OF; WEST VIRGINIA.

2. The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State. See TERRITORIES, ORGANIZED; TERRITORY, ACQUIRED, STATUS OF; TERRITORY, CONSTITUTIONAL QUESTIONS OF.

SECTION IV.

1. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence. See INSURRECTIONS, HISTORY OF; INSURRECTIONS, SUPPRESSION OF; INVASION; LUTHER VS. BORDEN; REPUBLICAN FORM OF GOVERNMENT.

ARTICLE V.

1. The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate. See CONSTITUTION OF THE UNITED STATES, AMENDMENTS TO; SLAVE TRADE.

ARTICLE VI.

1. All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation. See CONFEDERATION, 1781-1789.

2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. See COURTS AND UNCONSTITUTIONAL LEGISLATION; COURTS, FEDERAL, JURISDICTION OF; LAW, CONSTITUTIONAL, AMERICAN; LAW OF THE LAND; TREATIES AS THE LAW OF THE LAND.

3. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. See OATH; OFFICE; QUALIFICATIONS FOR OFFICE; RELIGIOUS LIBERTY.

ARTICLE VII.

1. The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same. See FEDERAL CONVENTION.

Done in Convention, by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names.

[SIGNED BY]

Go: Washington,
Presidt. and Deputy from Virginia,
and by thirty-nine delegates.

[This text of the Constitution as it is here given, follows in punctuation, capitalization, etc., the text as it appears in the *Documentary History of the Constitution*, II (1894)].

AMENDMENTS.

Article I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. See Assembly, Right of; Bills of Rights; Constitution of the United States, Amendments to; Freedom of Speech and of the Press; Petition, Right of; Religious Liberty.

Article II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. See Arms, Right to Bear; Militia.

Article III.

No Soldier shall, in time of peace, be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be seized. See Bills of Rights; Houses, Private, Constitutional Protection of; Soldiers, Quartering of.

Article IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. See Bills of Rights; Houses, Private, Constitutional Protection of; Warrants; Warrants, General; Writ of Assistance.

Article V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. See Bill of Rights; Due Process of Law; Eminent Domain; Immunity; Indictment; Infamous Crime; Jeopardy; Jury, Grand; Liberty, Civil; Life, Protection to; Presentment; Property, Right of; Public Use; Witnesses.

Article VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. See Bills of Rights; Counsel; Jury, Petit; Trials; Venue; Witnesses; Writs, Common Law.

Article VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law. See Bills of Rights; Courts, Federal, Jurisdiction of; Equity; Jury, Petit; Law, Common.

Article VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. See Bail; Bills of Rights; Cruel and Unusual Punishment; Fines and Forfeitures.

Article IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. See Law, Constitutional, American.

Article X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. See United States as a Federal State.

Article XI.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State. See Chisholm vs. Georgia; Cohens vs. Virginia; Courts, Federal; Courts, Federal, Jurisdiction of; Eleventh Amendment.

ARTICLE XII.

The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President;—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States. See ELECTORAL COLLEGE; ELECTORAL COUNT FOR PRESIDENT; ELECTION SYSTEM IN THE UNITED STATES; ELECTIONS, FEDERAL CONTROL OF; PRESIDENTIAL ELECTIONS; TWELFTH AMENDMENT.

ARTICLE XIII.

SECTION I.

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. See EMANCIPATION PROCLAMATION; INVOLUNTARY SERVITUDE; SLAUGHTER HOUSE CASES; SLAVERY CONTROVERSY; THIRTEENTH AMENDMENT.

SECTION II.

1. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION I.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. See DOMICILE AND RESIDENCE IN STATES; DOUBLE CITIZENSHIP; EQUALITY BEFORE THE LAW; FOURTEENTH AMENDMENT; INSULAR CASES; LABOR, FREEDOM OF; LABOR, WOMAN'S; LIBERTY, CIVIL; LIFE, PROTECTION OF; MUNN VS. ILLINOIS; PERSON, LEGAL SENSE OF; PRICES AND CHARGES: PRIVILEGES AND IMMUNITIES OF CITIZENS; PROPERTY, RIGHT OF; SLAUGHTER HOUSE CASES; UNITED STATES AS A FEDERAL STATE: VESTED RIGHTS, PROTECTION OF.

SECTION II.

1. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. See APPORTIONMENT; SUFFRAGE.

SECTION III.

1. No person shall be a Senator or Representative in Congress, or elector of President

and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION IV.

1. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION V.

1. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article. See FOURTEENTH AMENDMENT.

ARTICLE XV.

SECTION I.

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. See FIFTEENTH AMENDMENT; NEGRO SUFFRAGE; SUFFRAGE.

SECTION II.

1. The Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumerations. See TAX, INCOME; SIXTEENTH AMENDMENT.

ARTICLE XVII.

1. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years, and each Senator shall have one vote. The Electors in each State shall have the qualifications requisite for Electors of the most numerous branch of the State Legislatures.

2. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies, provided that the Legislature of any State may empower the Executive thereof to make temporary appointments until the people fill the vacancies by election as the Legislature may direct.

3. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution. See SENATORS, ELECTION OF; SEVENTEENTH AMENDMENT. A. C. McL.

CONSTITUTION OF THE UNITED STATES, AMENDMENTS TO

Constitutional Provisions.—The Constitutional provision concerning amendment reads:

> The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by Congress: Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article: and that no State, without its Consent, shall be deprived of its equal suffrage in the Senate. (Art. V.).

Evidently two methods of proposing and two methods of ratifying amendments are here provided for. In practice the plan of submitting amendments by Congress to the states and of ratification by state legislatures has been followed.

Practice.—There is some reason for thinking that the framers of the Constitution expected that amendment would be freely resorted to. But the expectation, if such existed, has not been realized. We now know that an amendment is obtained only under considerable difficulty. Between 1804 and 1864 no amendment was adopted, and the Thirteenth, Fourteenth and Fifteenth Amendments were the product of a great civil war. The attempts to amend the Constitution have, however, been frequent. "Upward of 1,300 distinct resolutions, containing 1,800 propositions to amend

the Constitution, have been offered in the National Legislature during the first century of our history under the Constitution" (Ames, *Op. Cit., infra*, 19). Of the amendments so far adopted (1913) the first ten were adopted almost immediately after the new government was established; twelve were proposed by Congress in 1789 and the last ten of these were adopted (1789–1791). The Eleventh Amendment (*see*) was submitted in 1794 and its adoption was announced by the President in 1798. The Twelfth Amendment (*see*) was sent to the states in 1803 and was declared adopted in 1804. The Thirteenth, Fourteenth and Fifteenth Amendments (*see*) were declared adopted in 1865, 1868, and 1870 respectively, and the Sixteenth and Seventeenth in 1913.

Groups.—The amendments may be divided into five groups: (1) the first ten, constituting almost a part of the original Constitution, were intended to define the power of the national Government and the rights of the states somewhat more closely than was done by the main body of the Constitution, and especially to place limits on the authority of the national Government. (2) The next two—the Eleventh and Twelfth—while not unimportant, can scarcely be said to have affected the general system of government; the Eleventh altered the power of the judiciary or placed an interpretation on the third article, while the Twelfth merely changed the method of choosing the President. (3) The next three amendments constitute limits upon state action; the national Government is called to protect individuals against unjust or tyrannical action on the part of the states, and this marks a decided change from the point of view of 1789. (4) The Sixteenth, giving Congress the right to levy direct taxes (*see* TAXES, DIRECT), without apportionment among the states, remedied a defect which had been felt for some decades. (5) The Seventeenth, providing for the election of Senators by direct vote of the people, was the result of an agitation of over four score years.

Difficulty of Securing Amendment.—Considering the ease and frequency with which state constitutions are amended or even supplanted by new ones, the infrequency of the changes in the Federal Constitution is very marked. Doubtless there are many reasons for this: the Constitution is drawn in general terms and along broad lines; differing interpretations have been possible, for, though the Constitution is very rigid, in the sense that it is not easily amended, it is elastic; an unwritten constitution has grown up side by side with the written one and this has made possible the operation of new forces and the development of actual government. But the chief problem is the difficulty of actually securing amendments; so many differing interests must be reconciled, so many party or local prejudices may stand in the way, that the complicated process is beset with obstacles. It is apparent that even if an amendment battles its way through Congress, it can be defeated by one more than one-fourth of the states, and that fourth may contain a small fraction of the whole people. There is, of course, great trouble in getting Congress even to pay attention to a proposed amendment unless there is strong popular demand. Of the eighteen hundred propositions introduced into Congress in the first hundred years, over one-half were simply referred to a committee whence they did not emerge; the remainder received some further discussion but only a very small number were ever voted on in Congress. Besides the seventeen amendments, only four have been submitted to the states (1913); two of these—one on the apportionment of representation (1789) and one on titles of nobility (1810)—needed but one more ratifying state to secure adoption. (Ames, 285, 300). The process of amending the Constitution of the United States seems especially severe and complicated when we compare it with that in other nations. In England, of course, any law passed by Parliament may alter the Constitution, although the recent agitation and discussion concerning the House of Lords point to the fact that essential and vital change may, in practice, require much time and elaborate management and conference. In France the two chambers of the national legislature need to vote separately and by absolute majority that a revision of the constitution shall be undertaken; after an affirmative vote the two houses unite in a National Assembly and all propositions adopted by a majority of the members become valid parts of the constitution. In Germany changes in the imperial constitution can be affected by legislation; but propositions are defeated by fourteen votes in the federal council, and provisions in the constitution securing specific rights to an individual commonwealth in its relation to the union can be changed only with the consent of the privileged commonwealth. Thus while an amendment to the constitution of Germany might be made with great ease, it might, because of the restrictions mentioned above, be prevented by those who, in a sense, represent a small minority of the German people; and it must be said, there are other complexities in the system (*see* Burgess, *Op. Cit. infra*, I, 164, 165).

Legal Questions.—The Constitution sets no limit upon the time during which the states can ratify or reject an amendment. Is it possible for a state to accept an amendment years after submission and long after its failure was accepted as a fact, or can a state at any time give a proposition new life by taking it up and passing favorably upon it? As a matter of fact the senate of Ohio in 1873 voted to ratify an amendment which had been submitted in 1789 which had not been ratified by the necessary number of states at that time. Such ac-

tion may suggest rather opera bouffe than constitutional law; but the Constitution does not prohibit it.

Another question which bade fair to be serious in connection with the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments, is whether a state can legally change its mind. Having ratified, can a state, before final adoption by the requisite majority of states, rescind its ratification, or, having rejected, can it reconsider and adopt? New Jersey, having rejected the Thirteenth Amendment, proceeded to adopt it; four states dealt similarly with the Fourteenth Amendment and two with the Fifteenth. Moreover, three states, after they had adopted the Fourteenth Amendment, adopted resolutions of dissent; and one state took similar action concerning the Fifteenth Amendment. In all the cases save one, this dissent was expressed before adoption by the required three-fourths of the legislatures. There seems some ground for believing that a vote of adoption is final and binding—at least for a considerable period during which the amendment may be supposed to be under consideration by the states; but that rejection may be rescinded [Cf. Cooley, *Principles of Constitutional Law* (1898), 222–223]. It can scarcely be said, however, that the constitutional law is fixed on this matter; the very process of amendment needs further elaboration by constitutional amendment.

Questions have also arisen as to whether the signature of the President is necessary to a resolution submitting an amendment and whether the governor needs to sign a resolution of adoption by a state legislature. Here the precedent, and probably reason as well, appears to bear out the conclusion that in neither case is signature necessary. In the case of Hollingsworth *vs.* Virginia (3 *Dallas* 378) the question arose as to whether the President's approval was needed; the subject under consideration was the validity of the Eleventh Amendment. The court in that case held that the President had nothing to do with the proposing or adoption of amendments. President Lincoln, however, signed the Thirteenth Amendment when it had passed Congress; but this action was objected to by the Senate, which passed a resolution asserting such approval was unnecessary and should not be considered a precedent. Precedent also appears to have determined that the two-thirds vote of Congress, required by the Constitution means two-thirds of those present.

Interpretation.—The first ten amendments are express restrictions on the power of the National Government; they do not forbid state action or protect the citizen against action by his own state (Barron *vs.* Mayor of Baltimore, 7 *Peters* 243; *In re* Kemmler, 136 *U. S.* 436). When the Second Amendment, for example, says that "A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed," this does not mean that a state shall not forbid the keeping and bearing of arms, but that the National Government shall not. There has been an effort to secure an interpretation by the courts to the effect that the first part of the Fourteenth Amendment makes the first eight amendments restrictions upon the states, inasmuch as that amendment declares that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Such interpretation has not, however, been upheld by the courts. It is plain that the amendment means that no state could deprive a person of the privileges and immunities which he had *as a citizen of the United States.*

See Bill of Rights; Constitution of the United States, Growth of; Eleventh Amendment; Fifteenth Amendment; Fourteenth Amendment; Seventeenth Amendment; Sixteenth Amendment; Thirteenth Amendment; Twelfth Amendment.

References: H. V. Ames, "Proposed Amendments to the Constitution of the United States during the First Century of its History" in Am. Hist. Assoc., *Annual Report*, II (1896); J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, ch. xxxii; C. Borgeaud, *Adoption and Amendment of Constitutions in Europe and Am.* (trans. by C. D. Hazen, 1895); W. W. Willoughby, *Constitutional Law of the U. S.* (1910), 71, 175 *et seq.*, 519 *et seq.*; J. W. Burgess, *Pol. Sci. and Comparative Constitutional Law* (1893), I, 137–173; Maxwell *vs.* Dow, 176 *U. S.* 581; C. A. Beard, *Readings in Am. Government and Politics* (1911).

Andrew C. McLaughlin.

CONSTITUTION OF THE UNITED STATES, COMPROMISES OF. The history of the Federal Convention is, to a large extent, the history of adjustment and compromise, the effort to reach conclusions to which all elements would agree and which would not arouse dangerous opposition when the Constitution was submitted for adoption (*see* Federal Convention). 1. The most important of these compromises is commonly called the great compromise. The large state men desired proportional representation of the states in both branches of Congress, the small state men were opposed to proportional representation because they believed it would endanger the very existence of the small states. After it had been decided that in the lower house there should be representation from the states according to their respective populations, the opposition to a like basis for the second chamber appeared to be too strong to be overcome. The result was a compromise, whereby the right to originate money bills was given to the lower house, and the upper house was composed of two representatives from each state (Art. I, Sec. ii, ¶ 3; Sec. iii, ¶ 1; Sec. vii, ¶ 1).

II. Again, there was considerable discussion over the basis of representation and of direct taxation; should representation and direct taxation be established on similar principles and should the basis be wealth or total population, or something else? It was finally agreed that both representation and direct taxation should be determined by the respective populations of the states, and that only three-fifths of the slaves should be counted. This provision for counting three-fifths of the slaves is the famous three-fifths compromise; it gave to the slave-holding states the right to count three-fifths of the persons held as chattels; and in later years it was bitterly assailed by the anti-slavery men of the North (Art. I, Sec. ii, ¶ 3). III. The slave trade was a serious problem. The commercial states wanted to bestow on the central authority the power to regulate commerce and to pass a navigation act; on the other hand the states of the lower South wanted the right to bring in more slaves. So this was compromised; Congress was given the general power to regulate commerce, but was expressly forbidden to prohibit the slave trade before 1808, save that a tax of not more than ten dollars per head could be levied on imported slaves (Art. I, Sec. viii, ¶ 3; Sec. ix, ¶ 1). IV. There was trouble settling upon the form of the judiciary; some of the members disapproved a federal judiciary system that would reach through the states, declaring that the state courts might be interfered with and that they might well be left with a large share of the jurisdiction provided for in the federal system. It was finally decided that judicial power should be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish (Art. III, Sec. i, ¶ 1).

V. The presidency presented serious difficulties. Any plan of election based upon the size of the respective states gave the large states an advantage. It was, therefore, finally agreed that the electors from each state should be equal to the whole number of Senators and Representatives, but in case there was no majority the Senate should choose under certain limitations from the persons voted for by the electors. This right with some modifications was finally transferred to the House, where the vote was to be by states. Thus the small states would have an equal power with the large in case there was no choice by the electors, a contingency that was thought not to be improbable (Art. II, Sec. i, ¶ 3). VI. There were other compromises, for example that concerning the power to control the militia (Art. I, Sec. viii, ¶ 16). Not unimportant also was the conclusion concerning the admission of new states on terms of equality with the old (Art. IV, Sec. iii, ¶ 1). It is not perfectly clear that this provision is a compromise; but there may have been a direct dodging of the issue when it was decided to provide that "new States may be admitted by the Congress into this Union."

See Federal Convention.

References: M. Farrand, "The Compromises of the Constitution" in *Am. Hist. Review*, IX (1904), 479–489, *Records of the Federal Convention* (1911) I, II, *passim;* A. C. McLaughlin, *Confederation and the Constitution* (1905), chs. xiv, xv, xvi; J. Fiske, *Critical Period of Am. Hist.* (1901), ch. vi.

Andrew C. McLaughlin.

CONSTITUTION OF THE UNITED STATES, CONTROVERSIES UNDER. See Controversies under the Constitution.

CONSTITUTION OF THE UNITED STATES, A COVENANT WITH DEATH AND AN AGREEMENT WITH HELL. William Lloyd Garrison (*see*), January, 1843, placed at the head of the *Liberator* the following statement which, as a resolution, had previously been passed at his instigation by the Massachusetts Anti-Slavery Society: "The Compact which exists between the North and the South is 'a covenant with death and an agreement with hell'—involving both parties in atrocious criminality—and should be immediately annulled." The words are in part taken from Isaiah, xxviii, 18. See Abolitionists.

O. C. H.

CONSTITUTION OF THE UNITED STATES, ELASTIC CLAUSE OF. See Elastic Clause.

CONSTITUTION OF THE UNITED STATES, GENERAL WELFARE CLAUSE OF. See General Welfare Clause.

CONSTITUTION OF THE UNITED STATES, GROWTH OF. The Constitution since 1789 has grown or become modified through three distinct processes: by formal amendment, by interpretation, and by the development of what has been called the unwritten constitution. (1) Only seventeen amendments to the Constitution have been adopted up to the year 1914. (2) The interpretation of the Constitution given by the Supreme Court in deciding cases arising under its jurisdiction is usually accepted by the other departments of the government as final. The Court, in theory, aims to interpret the Constitution according to its original intent, but a broader or narrower meaning may easily be read into it owing to the "personal equation" of the judges, who naturally desire to adapt the meaning of the text to the general needs of the times. Chief Justice Marshall, for instance, exercised by his decisions an influence over the Constitution probably as great as that exerted by Madison, the "Father of the Constitution." A policy of adaptation on the part of the court may be noted under the leadership

of Chief Justice Taney before the Civil War, and a third policy is clearly manifest in the decisions during the period of reconstruction (*see*). "Legislation through the judiciary" becomes especially possible when several meanings are permissible in consequence of undue brevity or ambiguity in the phraseology of the Constitution. Illustrations of this may easily be obtained from a study of the decisions of the Court in respect to the commerce clause, the obligation of contracts, and section one of the Fourteenth Amendment. On the other hand the power of the Supreme Court to interpret the Constitution has its limitations, since it can act only when cases are submitted to it for decision. It may happen that no case will arise calling in question the constitutionality of a law, which nevertheless may be unconstitutional. The court, for example, in the Dred Scott case (*see*) intimated that the Missouri Compromise was probably unconstitutional, though it had been law for over thirty years. Furthermore, both the President and the Congress have the right to interpret the Constitution, and if their interpretations are formulated under their discretionary or political powers, the Supreme Court will, as a matter of policy and courtesy, not question these interpretations, since the three bodies are coördinate departments of the government (*see* POLITICAL QUESTIONS). Under this theory Lincoln, interpreting his war powers, issued the Emancipation Proclamation (*see*), and Congress under its power to guaranty to the states "a republican form of government" reconstructed the defeated states of the southern Confederacy.

(3) Growth through the rise of an unwritten constitution may include the virtual abandonment of outgrown forms retained in the Constitution, as well as fundamental practices not incorporated into the Constitution. Obviously the mechanism devised by the framers of the Constitution, to be used in the election of the President and the Vice-President, is practically obsolete. The electoral colleges by intention should use their discretion in the choice of candidates, but in fact are merely boards of record for the electorates of the several states, who elect candidates suggested to them by a national political convention, a body entirely unknown to the makers of the Constitution. The Cabinet of the President is unknown to the written Constitution of the United Statse; and even the vast power of the President over all other executive and administrative officials is quite as much a matter of growth as of strict constitutional provision.

Again, although the written document with its amendments and interpretations is the formal Constitution of the United States and is superior in authority to the constitutions of the states and to the statutes of Congress, yet in these, also, may be found legislation of fundamental importance, really supplementary to the provisions of the national Constitution. The states, for example, have almost unrestricted power over the suffrage in national elections and have full control over local government within their own borders. Congress in its turn, using its enormous powers, has vastly increased the national domain by annexation and purchase and determines the system of territorial and colonial government.

The Constitution, moreover, pays slight attention to the organization of either house of Congress, so that this important power is left to congressional rule or statute. The Speaker of the House, for instance, is merely mentioned in the Constitution, but no hint of his powers is given. The early Speakers in fact, had only the usual powers of a presiding officer, yet to-day the office in prestige and influence ranks next to that of the presidency. Then, too, the rise of the committee system in both houses has largely transferred legislative authority to the committees, each within its own sphere, while the chairmen of the chief committees unitedly form a sort of legislative ministry, each leading within its own house. The Constitution, furthermore, by intention desired that the executive and legislative departments be kept separate. But a President of strong personality, using as a weapon his delegated powers, such as that of appointment, or the threat of a veto, may, as a sort of legislative premier, formulate a policy and induce Congress to adopt his recommendations as its own. The heads of the departments, also, his official Cabinet, are constantly in touch with the several committees having discretionary power over bills affecting national administration, so that a powerful executive who is in political sympathy with the party controlling a majority in both houses, may readily exert almost a determining influence in legislation, while at the same time retaining his own executive and administrative authority unimpaired. On the other hand, should the chief executive be weak, or politically antagonistic to the dominant party in Congress, he may be so handicapped by congressional opposition as to be well nigh impotent, in the exercise of his powers, except in his purely ministerial functions.

See CONSTITUTION MAKING IN THE UNITED STATES; CONSTITUTION OF THE UNITED STATES, AMENDMENTS TO; CONSTITUTIONS, CLASSIFIED; COURTS AND UNCONSTITUTIONAL LEGISLATION; LAW, CONSTITUTIONAL, AMERICAN.

References: J. Bryce, *Am. Commonwealth* (4th ed., 1910), ch. xxxii; F. A. Cleveland, *Growth of Democracy in the U. S.* (1898); M. P. Follett, *The Speaker of the House of Representatives* (1896); C. G. Tiedeman, *Unwritten Constitution of U. S.* (1890); L. G. McConachie, *Congr. Committees* (1896); M. A. Hinsdale, *Hist. of the President's Cabinet* (1911); C. A. Beard, *Readings in Am. Government and Politics* (1911), ch. iv; A. B. Hart, *National Ideals, Historically Traced* (1907), chs. vi, viii, xix.

JAMES Q. DEALEY.

CONSTITUTION OF THE UNITED STATES, PREAMBLE TO. In the Preamble to the Constitution are given the general purposes and intent of its powers, the objects hoped for from its establishment:

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our prosterity, do ordain and establish this Constitution for the United States of America.

These words have often been called into requisition in arguments concerning the nature of the Union. It is pointed out that the Constitution instead of being on its face an agreement between states, is declared to be a constitution established by the people of the United States. Thus, Justice Story, in the case of Martin *vs.* Hunter's Lessee (1 *Wheaton* 304), says the Constitution "was ordained and established, not by the States in their sovereign capacities, but emphatically by the people of the United States." One may well question, however, whether the men of 1787 had more in mind than recurrence to the people as distinguished from the governments of the states; and in all probability they did not see a single people as a unity, posesssed of will, definitely ordaining the new law (*see* STATE SOVEREIGNTY). But, taken in connection with the method of adopting the Constitution the words point to an intention of establishing something different and more substantial than the Confederation (*see*). The use of the word Constitution cannot be passed over as of no moment. The framers of this document knew a constitution, for America had been making constitutions. On the whole, therefore, one must think the choice of the word significant. The intention to establish "a more perfect union" is also sometimes referred to; but while this shows a purpose to form a firm union, a technical argument resting on the fact that the Articles of Confederation had purported to establish "a perpetual union" appears very defective when subjected to criticism. It ought to be added also that it is not proper to resort to the Preamble to enlarge the powers conferred on the government or its departments. "It has never been regarded" said Justice Harlan, "as the source of any substantive power conferred on the government of the United States or on any of its departments." See CONSTITUTIONS, CLASSIFIED; FEDERAL CONVENTION; INDESTRUCTABLE UNION. References: W. W. Willoughby, *The Constitutional Law of the United States* (1910), 35–39; J. Story, *Commentaries on the Constitution of the United States* (3d ed., 1858), § 457, 462; Jacobsen *vs.* Mass., 197 *U. S.* 11, 22. A. C. McL.

CONSTITUTION OF THE UNITED STATES, PROHIBITIONS IN. The Federal Constitution contains a series of enumerated powers granted to the Federal Government. When a question arises as to the validity of congressional legislation, it is necessary to show that the power to pass such legislation has been granted. This principle of construction of the Constitution differs from that followed in considering the validity of state legislative action; for in the latter case the legislature is supposed to possess all powers not expressly or impliedly prohibited. Consequently we should not expect to find in the Constitution of the United States many prohibitions upon the action of the Federal Government; indeed, if perfect logic were followed, we should find there only prohibitions referring to the exercise of powers which might conceivably be held to lie within the grant of more general powers, or resulting from the general purposes and nature of the government. The main body of the Constitution contains a few distinct prohibitions; in all cases, except when the states are expressly mentioned, they are directed to the National Government and not to the states.

Important restrictions upon the power of the United States which are expressly provided in the Constitution are as follows (1) The privilege of the writ of habeas corpus (*see*) shall not be suspended unless when, in case of rebellion or invasion, public safety may require it (Art. I, Sec. ix, ¶ 2). (2) No bill of attainder, or ex post facto (*see*) law, shall be passed (Art. I, Sec. ix, ¶ 3). (3) No capitation or other direct tax (*see* TAXES, DIRECT) shall be laid, unless in proportion to the census or enumeration (Art. I, Sec. ix, ¶ 4). (4) No tax or duty shall be laid on articles exported from any state (Art. I, Sec. ix, ¶ 5). (5) No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another (Art. I, Sec. ix, ¶ 6). (6) No money shall be drawn from the treasury but in consequence of appropriations made by law (*see* APPROPRIATIONS). (Art. I, Sec. ix, ¶ 7). (7) No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state (*see* NOBILITY, TITLES OF) (Art. I, Sec. ix, ¶ 8). (8) No person shall be convicted of treason unless on testimony of two witnesses to the same overt act, or on confession in open court; no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted (*see* BILL OF ATTAINDER) (Art. III, Sec. iii, ¶ 2). (9) No new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress (*see* STATES, ADMISSION OF) (Art. IV, Sec. iii, ¶ 1).

(10) No state, without its consent, shall be deprived of its equal suffrage in the Senate (Art. V). (11) No religious test shall ever be required as a qualification to any office or public trust under the United States (*see* RELIGIOUS LIBERTY) (Art. VI, ¶ 3).

The Constitution in Article I, Sec. x, also contains express prohibitions upon the states:

> No state sball enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold or silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.
> No state sball, witbout the consent of Congress, lay any imposts or duties on imports or exports, except wbat may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports shall be for tbe use of the treasury of tbe United States; and all such laws shall be subject to tbe revision and control of tbe Congress. (*see* EXPORTS).
> No state shall, without the consent of Congress, lay any duty of tonage (*see*), keep troops or sbips of war in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

The first eight amendments of the Constitution contain restrictions upon the power of the Federal Government. These restrictions are similar to those that appear in the bills of rights of the various states.

The Thirteenth Amendment is a restriction upon the Federal Government and the states; it provides that neither slavery nor involuntary servitude shall exist within the United States, or any place subject to their jurisdiction. The Fourteenth amendment in its first section restricts the states by declaring that the states shall not make or enforce any law which will abridge the privileges or immunities of citizens of the United States or deprive any person of life, liberty, or property without due process of law or deny to any person within its jurisdiction the equal protection of the laws. The Fifteenth provides that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

See ARMS, RIGHT TO BEAR; ASSEMBLY, RIGHT OF; BAIL; BILLS OF RIGHTS; CONSTITUTION OF THE UNITED STATES, AMENDMENTS TO; CRUEL AND UNUSUAL PUNISHMENT; DUE PROCESS OF LAW; EMINENT DOMAIN; FOURTEENTH AMENDMENT; FREEDOM OF SPEECH; INFAMOUS CRIME; JEOPARDY; NEGRO SUFFRAGE; PETITION, RIGHT OF; SOLDIERS, QUARTERING OF; WARRANTS.

References: W. W. Willoughby, *The Constitutional Law of the U. S.* (1910), chs. xlv–xlix; J. Story, *Commentaries on the Constitution of the U. S.* (4th ed., 1873), II, §§ 1331–1409. ANDREW C. MCLAUGHLIN.

CONSTITUTION OF THE UNITED STATES, SOURCES OF. The men that framed the Constitution were experienced in politics; some of them were well read in history and political theory. They were, it is true, not entirely exempt from the notion, more or less prevalent at the time, that principles of pure reason could be applied to the production of a system of government; and, indeed, even their references to history appear at times rather fanciful than sound and realistic; on the whole, however, they were practical men of affairs, and, as the convention was in the hands of men who were conservative and opposed to extreme individualistic and revolutionary doctrines, the Constitution naturally bears little evidence of pure theory or of idealistic notions. It must be remembered that the making of constitutions had been for ten years one of the chief tasks of American statesmen and politicians; the men of 1787 were not therefore on totally unfamiliar ground.

There is little that is really new in the Constitution; at least back of nearly everything, can be traced a long history of development. The Constitution, as a written ordinance of government, takes its origin in the colonial charters, which at the beginning were either documents establishing fiefs across the sea, or documents constituting companies or corporations for trade and settlement. The history of these documents leads us back into mediaeval England, not to speak of remoter origins.

The federal system, the scheme of distributing powers between governments, was itself an outgrowth of colonial experience under England. The framing of the Articles of Confederation and the failure of the confederate arrangement of powers had pointed to desirable alterations in the assignment of authority to the National Government. Men that had passed through the active political controversies of a decade needed not to be told that it was necessary to give the central Government undeniable control over foreign affairs, the power to regulate trade, and the power to obtain money without simply asking the states to supply it. The central and pivotal principle of American federal organization, the plan of having two governments directly over each individual citizen, was more nearly a creation than anything else; and yet even here we can trace historieal preparation. The establishment of the Constitution as law, though a most significant development, had behind it not only the philosophy of the American Revolution, but also the eolonial charters and the power of the King in council.

As far as the meehanism of government was concerned, the framers were guided by the state constitutions. Sir Henry Maine thought that the plan of choosing the President by electors was an imitation of the eleetoral system of the Holy Roman Empire—an interesting example of the case with which one can see eonscious imitation when there is some degree

of outward similarity—but even here we find state precedent; for by the constitution of Maryland the state senators were selected by electors. The offices of President and Vice-President are similar to the executive offices in the states, while these offices in turn were like the executive offices that had existed in the colonies; there was no great intent to reproduce the executive system of Europe. The bicameral system of the legislative authority was in vogue in nearly all of the states and was the product of colonial development. The right of the House to originate bills for raising revenue was part of the compromise between the large and small state parties in the convention (*see* CONVENTION, FEDERAL; CONSTITUTION OF THE UNITED STATES, COMPROMISES OF) and not merely an imitation of the English system, although doubtless colonial effort and experience had their effect and the colonial legislatures had in their growth been influenced or guided by the practice of the Commons.

The English system, as it was supposed to be, offering examples to be followed as well as defects or dangers to be avoided, was more influential than other foreign systems in its immediate effect on the framers of the Constitution; and from the whole history of England came principles and practices that American experience had already sanctioned and developed. The Netherlands were not left out of consideration in the convention, but Dutch institutions were referred to on the whole rather as furnishing examples to be avoided than as furnishing a model to be followed. There were references in the convention even to the old Greek federations. Central principles of human nature and theories of natural political proclivity and tendency were frequently mentioned. In the main, however, we must conclude that the Constitution was in large degree—even probably when the framers believed they were making something new—a formulation of the teachings and practices of the past, a product of colonial experience, and an adaptation of state constitutions, which were themselves not *a priori* documents, but the outgrowth of colonial charters and of working institutions which had gradually grown into shape.

See COLONIAL CHARTERS; CONVENTION, FEDERAL; COURTS AND UNCONSTITUTIONAL LEGISLATION.

References: C. E. Stevens, *Sources of the Constitution* (1894); W. C. Morey, "Genesis of a Written Constitution" in Am. Acad. of Pol. and Soc. Sci., *Annals*, 1891, I, 529–557; J. H. Robinson, "Original and Derived Features of the Constitution" in *ibid*, 1890, 202–243; A. Johnston, "First Century of the Constitution" in *New Princeton Review*, IV (1887), 175.

ANDREW C. MCLAUGHLIN.

CONSTITUTIONAL CONVENTION

Historical Sketch.—The convention as an independent organ for framing constitutions had its origin in the early years of the American Revolution (1774–1776). The legislative assemblies of the colonies, constituting as they did the popular organs of the colonial governments, took an active share in the movement leading up to the Revolution, but when the time for military opposition came, it was necessary that they be replaced, because these bodies were (except in Connecticut, Rhode Island, Pennsylvania and Delaware) subject to adjournment, prorogation, and dissolution by the royal governors.

And so, in the years 1774–75, provincial congresses or conventions sprang into existence. These bodies were composed largely of those who were at the same time members of the provincial assemblies, and assuming as they did, the conduct of military operations and of the movement against Great Britain, they soon took over practically all the powers of government.

This revolutionary organization was devised merely to meet a temporary emergency. It was necessary that governmental conditions be settled upon a more permanent basis, and the Continental Congress, in reply to a request from New Hampshire, recommended to the provincial convention of that state on November 3, 1775, that a full and free representation of the people be called, and that the representatives, if they thought necessary, should establish a form of government to continue during the dispute between Great Britain and the colonies. A similar recommendation was made with respect to South Carolina, and on May 10, 1776, the Continental Congress resolved that all government under the Crown of Great Britain should be suppressed. Acting in accordance with these resolutions and with the necessities of the times, eleven state constitutions were framed during the years 1776 and 1777.

The New Hampshire provincial congress took the first step in the establishment of a new government. The congress of November, 1775, in issuing precepts for the election of members to a new congress asked the several towns to empower their delegates to establish a new government, and the newly elected congress actually resolved itself into a house of representatives on January 5, 1776, and framed a temporary constitution. Similar action was taken by the South Carolina provincial congress in March, 1776, but in this state the

members of the congress had not been authorized by the voters to take such action.

Of the constitutions framed during the years 1776 and 1777, those of South Carolina, Virginia, and New Jersey were adopted by bodies which had not been expressly authorized to take such action. In all the other cases (New Hampshire, New York, Pennsylvania, Delaware, Maryland, North Carolina, Georgia, Vermont) the congresses or conventions which framed constitutions were expressly authorized by the voters to take such action, and in several cases new elections of delegates were held primarily for the purpose of obtaining such authorization. During this period no conventions were assembled solely for the purpose of framing constitutions. The period was one of military conflict, and the presence of two representative bodies in the state at one time might have imperiled the revolutionary cause. But during these years it was generally assumed that legislative bodies should not frame constitutions unless they had authority to do so from the voters, and of the eleven constitutions framed, eight were framed by bodies so authorized; two others were framed by bodies not having such authorization (Virginia, South Carolina), but under protest from some of the members. The principle that those framing constitutions should have authority from the people seems to have been well established; and the South Carolina constitution of 1778 and the proposed Massachusetts constitution of 1778, although framed by regular legislative bodies, were drawn up only after these bodies had obtained express authority to take such action.

In many states during this period there was a strong feeling that no constitution should be adopted until it should have been submitted to and approved by the people, and the New Hampshire constitution of 1776 was strongly objected to because it was not submitted. Resolutions in New York and North Carolina expressed strongly the demand for a popular voice in the approval of constitutions, but here too it is probably the case that the popular participation was less than might have been desired because of the critical condition of affairs and of the necessity for prompt action. Even under these conditions action was taken in a number of states which amounted to an informal submission of constitutions to the people (Maryland, Pennsylvania, North Carolina, South Carolina, 1778), but the proposed Massachusetts constitution of 1778 is the first instrument of government which was formally submitted to a vote of the people.

In the development of what has now become the ordinary method of framing constitutions in this country, three steps may be distinguished: (1) the framing of constitutions by regular legislative bodies, but under direct authorization from the people; (2) the framing of constitutions by a body separate and distinct from the regular legislature; (3) the submission of a proposed constitution to a vote of the people before it should become effective. The first of these steps may be said to have been definitely taken in framing the constitutions of 1776 and 1777; the second was taken in New Hampshire and Massachusetts during the revolutionary period; and the first example of the third, that of formal submission to the people, may be found in Massachusetts in 1778.

In New Hampshire protest was made against the framing of the constitution of 1776 by a body not chosen for that purpose only, and a convention was chosen in that state in 1778, distinct from the regular legislative bodies, which drafted the proposed constitution of 1779. This constitution was submitted to the people for approval and was rejected. A second convention, similar to the first, was assembled in 1780, which submitted proposed constitutions in 1781, 1782, and 1783; the first two were rejected by the people, the third was adopted. In Massachusetts a majority of the towns in 1777 authorized the general court to frame a constitution, but the proposed constitution was rejected when submitted to the people in 1778, largely because it had not been framed by a body chosen for the one purpose of forming a constitution. A convention, distinct from the general court, was then authorized, and the constitution which it framed was ratified by the people in 1780.

New Hampshire and Massachusetts are the only states which during the revolutionary period employed the constitutional convention as we know it to-day that is, an independent body for constitutional action, with the submission of its work for the approval of the people. The earlier development of this procedure in these states is due in part to the fact that in neither was there any great need for urgency at the time when they employed the convention; both states had fairly stable governments, there was no aggressive Tory element, and neither was threatened by military operations after Burgoyne's surrender in October, 1777. The earlier development here may also have been due in part to the fact that the New England town meeting furnished a ready means for taking the will of the people upon such a question as that of adopting a constitution, while no such effective instrument for this purpose existed outside of New England.

Of the constitutions framed during the revolutionary period those of Pennsylvania (1776), Vermont (1777), Georgia (1777), Massachusetts (1780), and New Hampshire (1784) provided for the future use of conventions. In Pennsylvania a council of censors was to be elected every seventh year, and this body, two thirds of its members concurring, was to have power to call a convention to amend the constitution in such parts as the council of censors should think necessary, and it was further provided that "the amendments proposed,

and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject." Vermont copied this provision of the Pennsylvania constitution, except that it provided a different manner for the election of members of the council of censors.

In Georgia, also, provision was made for a constitutional convention, but here it was to be called by the legislature upon the petition of a majority of the voters of a majority of the counties. The petitions of the people were to specify the amendments desired, and the legislature was required to order the calling of a convention, "specifying the alterations to be made, according to the petitions preferred to the assembly by the majority of the counties as aforesaid."

The Massachusetts constitution of 1780 made provision for the submission to the people in 1795 of the question as to the desirability of revising the constitution. If two thirds of those voting on the question should favor a revision, the general court was to call a convention for that purpose. The New Hampshire constitution of 1784 was the first to contain the specific requirement not only of a separate convention for constitutional action, but also that the work of such convention should be submitted to the approval of the people.

The Convention Since 1784.—It may be said that by 1784 the constitutional convention was firmly established as a body distinct and separate from the regular legislature. Although an absolutely separate body had up to this time been employed for constitutional legislation only in New Hampshire and Massachusetts, yet in the other states the regular legislative bodies were used largely because of emergencies which made undesirable the assembling of a body of representatives distinct from that already in existence. Conventions as independent bodies were provided for by the first constitutions of five states. Since 1784 constitutions have, with a few exceptions, been framed or adopted by conventions chosen by the people for this purpose.

The most important exception to this statement is the Nebraska constitution of 1866, which was framed by the territorial legislature and by it submitted to the people. In 1873 a proposed new constitution for Michigan was drafted by a commission appointed under the authority of a legislative act, and was submitted to the people by the legislature, but was rejected. A proposed new constitution for Rhode Island, drafted in a similar manner, was rejected by the people in 1898 and 1899. The Indiana legislature of 1911 drafted a new constitution the submission of which to the people was enjoined by the courts.

Something more than two hundred constitutional conventions have been held in states, or in territories seeking admission to the union, but not all of these conventions have framed constitutions. In Massachusetts, for example, the constitution of 1780 remains substantially unaltered, yet constitutional conventions were held in 1820–21 and 1853. Conventions have been held much less frequently in some states than in others. In Minnesota, for example, no convention has been held since the framing of the constitution of 1857, and in Indiana only two conventions have been held (1816 and 1850–51), while in New York, conventions have been assembled at almost regular intervals within each twenty-five year period (1776–77, 1801, 1821, 1846, 1867–68, 1894); in the southern states the number of conventions employed has been rendered larger by the secession conventions, and by the two sets of conventions called in these states during the reconstruction period. In Virginia, for example, there were conventions in 1776, 1829–30, 1850–51, 1861, 1864, 1867, and 1902.

Methods of Calling Conventions.—Reference has been made above to the provisions in the first constitutions of Pennsylvania and Vermont for the calling of conventions by councils of censors. In Pennsylvania only one meeting of the council of censors was held, and in the calling of the Pennsylvania constitutional convention of 1789, the requirements of the constitution were disregarded; the council of censors was abolished by the constitution of 1790. In Vermont nine conventions were called by councils of censors, under the constitutional requirements of that state; but here the council of censors was abolished in 1870. The provision in the Georgia constitution of 1777 for calling conventions after popular petition was never employed and the Georgia constitution of 1789 was framed by conventions initiated by the legislature.

Of the earlier state constitutions, aside from those of Pennsylvania, Vermont and Georgia, those of Massachusetts and New Hampshire (1784) were the only ones which provided for calling conventions. The Massachusett's constitution provided for a popular vote on the calling of a convention in 1795, and as the veto at this time was opposed to such action, there was no constitutional provision in Massachusetts for calling conventions after 1795. The New Hampshire constitution of 1784 provided for a popular vote upon the subject of calling a convention within seven years, and the constitution of 1792 provided for a similar vote within each seven years thereafter. But of the revolutionary frames of government which continued after 1784 seven made no provision for constitutional conventions, and provision for a convention has been absent from a number of constitutions framed more recently. In the states whose constitutions make no provision for conventions, it has been assumed almost

uniformly that conventions may be called, even in the absence of constitutional authorization; Rhode Island may be said to constitute, perhaps, the only exception to this rule. In the state constitutions, however, it has been the more common practice to insert definite provisions with respect to the assembling of constitutional conventions. With respect to the calling of conventions, the state constitutions may be divided into four classes:

(1) Those which make no provision whatever for the calling of conventions, but under which it is recognized that conventions may be called by legislative action. A number of constitutions have, as already suggested, contained no provision for conventions, and twelve state constitutions now in force contain no such provision. In these cases, where conventions are called, it is within the option of the legislature whether the people should be asked to vote whether or not they desire a convention, but in a number of such cases this has been done.

(2) Those which give the legislature power to call conventions, without first submitting the question of holding a convention to a vote of the people. This plan is the one now embodied in the constitutions of Maine and Georgia, and has, in earlier cases, been employed by other states. Under such provisions also there has in some cases been a feeling that the people should be consulted by a submission of the question to a popular vote.

(3) Those which require popular approval before a convention is called, but which expressly permit the legislatures to submit the question of holding a convention to the people whenever the legislatures themselves may think proper. This is the most popular provision with respect to the calling of conventions, and has been adopted in the constitutions of twenty-six states.

(4) Those which require that a vote be taken by the people at periodical intervals, upon the question of holding a convention, without reference to legislative action. This plan was somewhat popular for a while, but has not gained in favor. There are now seven states which require the periodical submission of the question as to whether a convention shall be called. New Hampshire requires a vote once every seven years; Iowa every ten years; Michigan every sixteen years; Maryland, New York, and Ohio every twenty years; and Oklahoma, while leaving it to the discretion of the legislature as to when the question of holding a convention shall be submitted to the people, requires that the question be submitted at least once every twenty years. The constitutions of Iowa, Michigan, New York, and Ohio contain provisions permitting the legislature to submit to the people the question of holding a convention at other times than the ten, sixteen and twenty-year periods.

The introduction of the initiative (*see*) and referendum (*see*) permits the people of the states in which they have been adopted to initiate and adopt a measure providing that a convention be held, and thus removes the question from legislative control to a large extent.

The practice of obtaining the approval of the people for the calling of a convention may be said to have become almost the settled rule. Thirty-two state constitutions now require such popular approval, and even where it has not been expressly required, such a popular vote has been had in a majority of cases in recent years. Where a popular vote is required to authorize a convention, the number of votes which may authorize such action varies.

After the people have by a popular vote authorized a convention, it becomes necessary in most cases for legislative action to be taken so that provision may be made for the election of delegates and the assembling of a convention. Under the New York constitution of 1894 and the Michigan constitution of 1908, however, the convention assembles as a matter of course after being authorized by the people, without the necessity of any legislative action; all regulations concerning the apportionment and election of delegates, and the assembling of the convention are contained in the constitutions themselves; and similar provision is made by the Missouri constitution of 1875. In the other states, legislative action must be taken in order to assemble a convention, even after the convention has been authorized by the people, yet a number of the constitutions contain provisions with respect to such matters as the number of delegates, their apportionment and method of election, etc., and only eight states leave such matters entirely in the hands of the legislatures.

When constitutional conventions are assembled in territories under congressional enabling acts, the number and election of delegates, etc., are ordinarily determined in the enabling acts. Where a territorial legislature itself has assumed the initiative in calling a convention, with the idea that steps should be taken to seek admission into the Union, the territorial legislative act itself has ordinarily made detailed provision with respect to the composition and assembling of the convention. With respect to a federal convention, the Constitution of the United States simply provides that "the Congress . . . on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments" (Art. V). This language leaves Congress free to make all regulations as to the conditions under which a convention shall be held.

Procedure of Constitutional Conventions.—The state constitutions have ordinarily contained no provisions regarding the procedure of conventions, and the legislative acts under which conventions have been assembled have not, except in a few cases and with respect to matters not essentially restricting the mode of

procedure, attempted to determine how conventions should act in the framing of constitutions. Constitutional conventions have, in general, adopted and observed rules of procedure not very different from those of other bodies of a deliberative character.

In the framing of a constitution it, of course, may be possible for a convention to conduct all of its work directly in convention—that is, acting, as a body, without going into committee of the whole or dividing the work among committees. But such a plan would be cumbersome and unsatisfactory and has not been employed. The plan ordinarily employed is that of using committees. In the use of committees three methods have been employed: (1) The transaction of business mainly in committee of the whole, with perhaps some smaller committees appointed to handle particular matters. This method is one which would be apt to work unsatisfactorily unless the plans for a constitution had been pretty well matured before the meeting of the convention. The committee of the whole was used to a large extent by the federal convention of 1787, and, was adopted also by the Pennsylvania convention which met in 1789.

(2) In a number of the earlier conventions the plan was adopted of appointing a small committee, with full power to prepare and report a draft of a constitution to the full convention. This plan was adopted by the revolutionary conventions of Maryland, Virginia, New Jersey and Pennsylvania in 1776, and by those of New York and Vermont in 1777, but the conventions in these cases were assembled not only for the framing of constitutions, but also for the conduct of warlike operations, and the appointment of a special committee left the other members of the convention free to attend to the general duties of these bodies, which were equally urgent. The Massachusetts general court in 1778 appointed a special committee to frame a constitution, as also did the Massachusetts convention of 1779–80, the Tennessee convention of 1796, and the California convention of 1849.

(3) But the more usual practice has been for a convention to appoint a number of committees, and to distribute among them the several parts of the constitution, to be considered and reported upon to the convention either in regular session or in committee of the whole. The number of committees appointed for such a purpose has varied considerably, running from four in one case to more than thirty in others. The members of such committees have been as a rule appointed by the president of the convention. One of the most important committees of a convention is the committee on style or on arrangement and phraseology, which is usually appointed for the purpose of harmonizing the various proposals adopted by the convention and putting a constitution into something like the final form in which it should be adopted.

In the use made of committees as well as in the general methods of procedure employed, the Michigan convention of 1908 deserves brief discussion. Here after the election of a president and other permanent officers, a committee on permanent organization and order of business was appointed, upon whose recommendation twenty-eight standing committees were authorized, the members being appointed by the president. Much of the important work of the convention was done in these committees. Proposals introduced by members were read and referred to the appropriate committee; when reported by the committee they were taken up in committee of the whole, and when reported upon by the committee of the whole were referred to a committee on arrangement and phraseology. The proposal when reported upon by this committee was put upon its second reading, and after second reading was voted upon. If adopted it was again referred to the committee on arrangement and phraseology, which, after all proposals had been so considered reported the complete revision as agreed upon. This revision was then considered by sections in the committee of the whole, was reported to the convention, and was there put upon third reading and voted upon by articles and as a whole. This procedure gave four different opportunities for the discussion and amendment of every proposal. But, more important, it gave the committee on arrangement and phraseology great influence by allowing it an opportunity to revise the language of each proposal after it was agreed to in committee of the whole and before it was finally adopted; proposals as revised came again to this committee to be consolidated into a complete constitution. As a result of this care, the Michigan constitution of 1903 is the best drafted of recent state constitutions.

Submission of Constitutions to a Popular Vote.—Attention has already been called to the fact that of the state constitutions adopted before 1784 only those of New Hampshire and Massachusetts were formally submitted to a vote of the people, although in several other states a plan was pursued which may have accomplished somewhat the same purpose. What amounted to an informal submission was had in Pennsylvania in 1790; and the Vermont constitution of 1786 (together with its later amendments to 1870) and the Georgia constitution of 1789, were ratified by bodies chosen by the people for that express purpose.

The New Hampshire constitution of 1792 was submitted to a direct vote of the people, and after this date the first states to submit their constitutions for popular approval were Connecticut in 1818 and Maine in 1819. Rhode Island, in 1824, submitted a constitution to the people which was, however, rejected. New York submitted its constitution of 1821 to a

popular vote, and was the first state outside of New England to submit a constitution to a direct vote of the people. The policy of submitting constitutions to the people soon became a general one. Virginia submitted its second constitution for popular approval in 1829, and from this time until 1860 the submission of constitutions to a popular vote was the prevailing practice. Conventions in Georgia in 1833 and 1839, in Tennessee in 1834, in Michigan and North Carolina in 1835, in Pennsylvania in 1837–38, and in Florida in 1839, submitted the results of their labors for the approval of the people. However, the conventions of Delaware in 1831, Mississippi in 1832, and Arkansas in 1836 did not submit their constitutions for popular approval. From 1840 to 1860 the practice of submitting constitutions for the approval of the people was followed almost without exception, but during the Civil War period submission became the exception rather than the rule in the southern states.

Yet from 1870 to 1890 this practice was uniformly acted upon, and the constitutions drafted by conventions were then submitted to a vote of the people almost as a matter of course. However, during the past twenty years there has been a wide departure from what may before this time have been regarded almost as a well-established custom. During this period thirteen state constitutions have been adopted. Seven of these constitutions were submitted to a vote of the people without reservation—those of New York (1894), Utah (1895), Alabama (1901), Oklahoma (1907), Michigan (1908), and New Mexico and Arizona (1911), but submission was required by congressional enabling acts in Utah, Oklahoma, New Mexico and Arizona; five constitutions adopted during this period were not submitted to the people in any manner—those of Mississippi (1890), South Carolina (1895), Delaware (1897), Louisiana (1898), and Virginia (1902); and one other, that of Kentucky (1891), was altered by the convention after it had been approved by the people.

In view of these facts it can hardly be said that the submission of constitutions to a popular vote has become a fixed practice. Yet all of the states, with the exceptions above referred to, have observed this practice since 1840; and of the thirty-four state constitutions which contain provisions regarding conventions, seventeen require that constitutions framed by such conventions be submitted to the people.

Relation of the Convention to the Legislature.—The convention has become, in our constitutional system, a regular organ for the expression of state will with reference to the state's fundamental law. Its purpose is limited and it is in no sense a revolutionary or extra-constitutional body. It does not in any way supersede the organs of an existing state government and does not take over the ordinary functions of government. But with a convention, assembled to revise or to propose the revision of the existing constitution, in session side by side with the regular legislative, executive and judicial organs of the government, the question presents itself as to what are the proper relations between such organs of government and the convention. Inasmuch as the convention is a legislative body, but with powers restricted to the proposal or revision of the fundamental law only, the important question here is as to the proper relations between the convention and the regular legislature of the state.

Reference has already been made to the fact that in all the states except New York and Michigan legislative acts are necessary for the calling of constitutional conventions. Can the legislature, in the exercise of this power, place limitations upon a convention, requiring it not to consider certain subjects, or that it insert certain provisions in the new constitution, or that it submit its work for the approval of the people, when such approval is not required by the existing constitution? In brief, is a convention subordinate to the regular legislative body of the state?

Judge J. A. Jameson in his work on *Constitutional Conventions* took the ground that a convention is absolutely bound by restrictions which the legislature may seek to place upon it. But this is certainly not true in Michigan and New York where the present constitutions contain provisions clearly intended to make the convention absolutely independent of legislative control, and the same statement holds of Alabama and some other states. But the question presents itself squarely in states where there are no constitutional provisions expressly or impliedly restraining legislative interference with conventions.

The convention loses a large part of its usefulness as an organ for constitution-making if it be regarded as strictly subordinate to the regular legislative body of the state, and where the question has squarely arisen, there are but few cases in which a position has been taken that conventions are absolutely bound by restrictions sought to be placed upon them by legislative acts. The position that a convention is subordinate to legislative authority has in its support views expressed by the supreme court of Pennsylvania in the cases of Wells *vs.* Bain and Wood's Appeal (75 *Penn. State Reports* 39, 59), but the views expressed in these cases are largely *dicta.*

The better view with respect to the relations between the legislature and the convention is that the convention is independent within its proper sphere. The convention is a regular organ of the state, although, as a rule, called only at long intervals; it is not sovereign, nor is it subordinate to the legislature. The legislature has no power to bind a convention as to what shall be placed in the constitution, or

as to the exercise of its powers in framing a constitution. But, on the other hand, the functions of a convention are limited. Its proper function is simply to propose a new constitution, or to propose constitutional amendments to the people for approval; or, in states where the submission of constitutions is not required, to frame and adopt a constitution if it thinks proper. In this sphere and in the exercise of powers incidental to its proper functions, it would seem that constitutional conventions are not subject to control by legislative acts.

The restrictions sought to be placed upon conventions by legislative acts have not in practice been recognized as of binding force, except in a few cases, and theoretically the convention in the performance of its proper functions should be independent of the regular legislative organs of the state. Legislative acts are usually necessary for the assembling of conventions, but this dependence of conventions upon legislatures has as yet caused few conflicts. The good sense of the people has ordinarily caused both legislatures and conventions to restrict themselves to their proper spheres. The general obedience of conventions to the legislative acts under which they were called has been due to the fact that legislative acts have usually required only those things which the convention would have done without legislative requirement; cases of conflict arise only when a legislature attempts to restrict a convention in such a manner as to interfere with its proper functions, and such cases have not been numerous. However, it would be better to have the assembling of conventions made independent of legislative action, as in New York and Michigan. The possibility of conflict is avoided if the convention as an organ for constitutional revision is entirely freed from the control of the regular legislature.

Constitutional Restrictions upon Conventions.—As a rule, it may be said that constitutional conventions are subject only to the following restrictions: (1) those expressly contained in provisions of the existing state and Federal Constitution; (2) in the absence of express constitutional provisions, those implied in such constitutions, and those implied from the limited functions of conventions. To these restrictions Jameson and others would add those imposed by legislative acts under which conventions are called, but such restrictions are certainly not yet recognized as of absolute binding force, except in Pennsylvania, and should not be so recognized if the convention is to be an instrument of great usefulness.

It is clear that express provisions in existing constitutions are binding upon a convention. A convention does not in any way supersede the existing constitutional organization and is bound by all restrictions either expressly or impliedly placed upon its actions by the constitution in force at the time. A new constitution does not become effective until promulgated by the convention, if this is permitted by the existing constitution, or until ratified by the people, if such action is required. In replacing the existing constitutional organization a convention properly acts only by the instrument of government which it frames or adopts. As an organ of the state and as a legislative body a convention is, of course, subject to the provisions of the Federal Constitution as to contracts, *ex post facto* laws, and to all other restrictions imposed upon the states by that instrument.

Implied restrictions upon conventions may be said to fall into two groups: (1) those implied from the constitution under which a convention is called; (2) those implied from the limited functions of conventions. These two classes of implied limitations coalesce and may be considered together in three classes: (1) A constitution by providing for the calling of a convention to revise or frame the organic law of the state impliedly limits the function of such a body to that one act and to the exercise of only such powers as are necessary or incident thereto. (2) In the absence of constitutional provisions regarding the convention, a convention if called acts under the constitution in existence, and by such constitution the exercise of executive, judicial, and regular legislative power is expressly conferred upon existing organs of government, which can not properly be replaced until a new constitution framed by the convention is put into operation. Where the existing constitution expressly provides that a certain power shall be exercised only by an organ of the existing government, as in provisions that money shall not be paid from the state treasury except under the authority of a legislative act, it is undoubted that a convention assembled under such a constitution may not exercise the power. The case is almost equally strong against a convention's power to exercise the regular legislative authority which has been expressly conferred upon another body by the constitution under which the convention is acting. (3) In addition to the limitations implied from the constitution itself, it may be said that a convention is ordinarily a body assembled for a limited and definite purpose, and cannot be presumed to have other powers than those necessary for the performance of its proper functions.

Actually, conventions assembled during the early revolutionary period, and in Missouri and the southern states during the Civil War, exercised wider powers than those just referred to as proper powers of constitutional conventions. But it has already been suggested that the conventions of the early revolutionary period were primarily provisional governments and only incidentally constitutional conventions. In Missouri, from 1861 to 1863, and in the southern states during the same period conditions were exceptional and to a certain ex-

tent justified conventions in acting outside of what was their more proper field. The reconstruction conventions in the southern states, in 1865–66, and 1867–68, although called not only to frame constitutions but also to reestablish state governments, did, actually, in a number of cases, go outside of their proper sphere and act as if they were bodies possessing all the capacities of the regular legislatures. Somewhat similar powers, in excess of those connected with the framing of constitutions, have been exercised in later cases by the Mississippi convention of 1890, the South Carolina convention of 1895, the Louisiana convention of 1898, and the Alabama convention of 1901. Such action has not been permitted to go unquestioned, and though acts by conventions in the performance of the ordinary functions of government have in some cases been upheld, yet on the other hand the courts in a number of cases have held such action to be invalid.

See CONSTITUTIONS, AMENDMENT OF; CONSTITUTIONS, CLASSIFIED; CONSTITUTIONS, STATE; FEDERAL CONVENTION; STATE GOVERNMENTS DURING THE REVOLUTION; STATES, ADMISSION OF.

References: J. A. Jameson, *Treatise on Constitutional Conventions* (4th ed., 1887); C. Borgeaud, *Adoption and Amendment of Constitutions in Europe and Am.* (1895); C. S. Lobingier, *The People's Law, or Popular Participation in Law-Making* (1909); E. P. Oberholtzer, *The Referendum in Am.* (1911), 69–141; W. F. Dodd, *Revision and Amendment of State Constitutions* (1910); J. A. Fairlie, "The Michigan Constitutional Convention" in *Michigan Law Review*, VI (1908), 533–551.

WALTER F. DODD.

CONSTITUTIONAL LAW, AMERICAN. See LAW, CONSTITUTIONAL, AMERICAN.

CONSTITUTIONAL UNION DEMOCRATS. See DEMOCRATIC PARTY; REPUBLICAN PARTY.

CONSTITUTIONAL UNION PARTY. The Constitutional Union party existed under that name in 1860 only, when it nominated candidates for the presidency and vice-presidency. It was in reality a last appearance of the Whig party (*see*). The American or Know-Nothing organization (*see*) of 1856 comprised most of the southern Whigs and a residue of the northern Whigs who disliked the Democrats and dreaded the Republicans. Between 1856 and 1860 the American party as a national organization ceased to exist, and most of its members in the northern states drifted into the Democratic or Republican ranks. In the South the former Whigs or Americans hung together persistently, and in 1860 took the field as a separate conservative party. In response to a call for a National Union convention, delegates met at Baltimore, May 9, 1860, organized under the name of the "Constitutional Union Party" and adopted a platform expressly omitting any declaration upon the pending slavery questions. The supporters were pledged to recognize "no political principle other than the Constitution of the country, the Union of the States, and the enforcement of the Laws." The candidates considered by the Convention were nearly all drawn from the southern "American" or Whig ranks; and one of these, John Bell of Tennessee was selected for President. Edward Everett of Massachusetts, representing the northern Whigs, was named for Vice-President. The party made an earnest campaign but, although it ran separate tickets in twenty-nine states and was represented in the fusion vote in three others, it cast only 588,879 ballots. Owing, however, to the division of the Democrats in the northern slave states, the party carried Virginia, Tennessee and Kentucky, and lost Maryland and Missouri by small margins. Bell and Everett received 39 electoral votes. It has been assumed that this party was representative of anti-secession feeling in the South, but in view of the course of events in 1861, it seems rather to have expressed the Whig partisanship and conservatism of the region, than any strong union sentiment. See KNOW-NOTHING PARTY; WHIG PARTY. References: C. F. Richardson in *Yale Review*, III (1894), 144; E. D. Fite, *Presidential Campaign of 1860* (1912); J. F. Rhodes, *Hist. of U. S. from the Compromise of 1850* (1893), II, 454.

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CONSTITUTIONS, CLASSIFIED

Definition.—A constitution is the fundamental law of a state—in other words, that body of law which is regarded as of primary importance. It is law because it embodies the will of the state, and is binding on all members of the state, however individual will may dissent. It is law, and not a compact or treaty. The latter is an agreement between states which are legal equals, binding only because of mutual agreement and revocable at will of either party under expressed or implied conditions. Law may be statutory or customary, *i. e.*, may express the will of the state expressly and definitely or tacitly and gradually. Constitutions may come into existence in either way. A constitution is often called the organic law because it always contains the organization of the state including its government.

Essential Elements.—A complete constitution has four essential elements: (1) That which enacts the organization and functions of the political state (*see* STATES, CLASSIFICATION OF). Here is found the electoral law—the conditions of suffrage, the mode of the exercise of the electoral franchise, and the scope of elections, *i. e.*, the officers to be chosen and the character of the laws, if any, to be enacted directly by the electorate. (2) That which enacts the organization and functions of government. Government is the agency by which the state seeks to accomplish its purposes. (3) The third consists of restrictions on the powers of government—what is commonly called a bill of rights (*see*). (4) The fourth contains the mode of amendment. A constitution should respond to changing conditions, social and political, and there must be a legal method for the enactment of amendments, or of a totally new constitution (*see* CONSTITUTION OF UNITED STATES, AMENDMENTS OF; CONSTITUTIONS, STATE, AMENDMENT OF. The process of amendment includes the drafting and recommendation of a proposition of constitutional change, and then its formal enactment into law.

Written constitutions are introduced by what is usually known as a preamble (*see* CONSTITUTION OF THE UNITED STATES, PREAMBLE TO). The only essential part of such introductory matter is what may be called the enacting clause, which a constitution has in common with all statutory legislation—"We, the people of the United States . . . . . do ordain and establish this Constitution." Other matter contained in a preamble is declaratory in its nature and is not an integral part of the legislation.

Constitutional and Statutory Organization.—A constitution contains what is considered most important in the plan of government, but necessarily leaves much to be supplied by statute. Thus the administrative departments of the federal executive in the United States are created by statute; so also are the federal courts, the Constitution only declaring that there should be one Supreme Court and such inferior courts as Congress may from time to time ordain and establish. In every state there is a great body of this organic statute law supplementary to the constitution—indeed, without this supplementary legislation the constitution could not go far. Constitutional officers and statutory officers, constitutional powers and statutory powers, are matters of constant discrimination in law. The constitution is the fundamental law; statute is any law enacted by a legislative body under the constitution.

Voluminous and Brief Constitutions.—Some constitutions are very voluminous, containing much matter of legislation which is ordinarily left to statute. This is the case because the matter in question is considered to be especially important, and because, therefore, it is desired to make its change less easy than is the case with statute law (*see* CONSTITUTION MAKING IN UNITED STATES; CONSTITUTIONS, STATE, LIMITATIONS IN). Generally speaking, no doubt, it is better that the constitution should be relatively brief and general in character, leaving much flexibility in matters to be covered by statute.

Residuary Powers.—A constitution seldom covers all the powers which belong to a sovereign state. The powers not thus covered—the residuary powers of government—may still be exercised by the state through such agency as may be provided. In Great Britain the residuary powers belong to the Crown, in the United States they belong to the states, or to the people (Amendment X).

Classification: Written and Unwritten.—The classification of constitutions depends on the mode in which they come into being and on their treatment of the various elements above noted. Constitutions may be written or unwritten. The former are embodied in a single document, the latter in a body of customs together with a greater or less number of important statutes. The constitution of the German Empire, of the French Republic, and of the United States of America are examples of written constitutions; that of Great Britain is unwritten. The Constitution of the United States is the oldest written constitution of a sovereign state now in force. Since its adoption, practically the whole civilized world outside the British Empire, and including many parts of that empire, have adopted constitutional government under written forms. The British constitution is the growth of many centuries. Certain of its great documents, like the Magna Charta and the Bill of Rights, limit the powers of the Crown. Other great documents, like the Reform Act of 1832, the subsequent acts of 1867, 1872, 1884 and 1885, and the Parliament Act of 1911, relate to the structure and powers of the two houses of Parliament, and to the definition and procedure of the electorate. Still other vital principles, notably the relation of the Cabinet to Parliament and to the Crown, are the creation of custom and not of any specific act of legislation.

Written constitutions tend to modification by custom as time passes. In the United States the function of the electors in choosing a President, the meetings of the President's Cabinet (*see*), indeed, the existence of a "Cabinet" at all, and the relation of individual Senators to appointments (*see* APPOINTMENT; PATRONAGE) are among matters which have been determined by custom. A written constitution has the advantage of definiteness. Like all codes of law, however, it is open to variety of interpretation, and thus, in time, is overlaid by a mass of legal construction. The Constitution of the United States and that of every commonwealth (state) in the Union has been

subject to interpretation by the courts, and cannot be understood in full without a knowledge of constitutional law. It is this, in part, which has led in most of the commonwealths to the adoption of a succession of new constitutions. Thus the constitutions of New York date from 1777, 1820, 1846, and 1894, and the constitutions of Illinois from 1818, 1848, and 1870. Massachusetts has been content with the constitution of 1780, but has adopted numerous amendments. The written constitutions of European constitutional monarchies, all more recent than that of the United States, are already made the subject of elaborate explanatory treatises (*see* CONSTITUTIONS, GROWTH OF).

Rigid and Elastic.—Constitutions are rigid or elastic. A rigid constitution is ordinarily held to be one which cannot be altered or amended save by some method or process different from that by which ordinary statute law is enacted; an elastic constitution is one which may be altered by the ordinary process of lawmaking. In reality the extent of rigidity depends on the ease or facility with which a constitution can be amended. The first organic law of the United States, the Articles of Confederation (*see*), could be amended only with the unanimous assent of all the thirteen states. This provision made the Articles so rigid as to be practically unamendable, and they were replaced in 1789 by a process which was in effect illegal and revolutionary. The present Federal Constitution of the United States is less rigid than its predecessor, but still it is not easy to alter (*see* CONSTITUTION OF THE UNITED STATES, AMENDMENTS TO).

The constitution of France and that of the German Empire are more elastic than that of the United States. Each may be amended by act of the national legislature, with limitations on the method of voting and on the vote required for enactment. In France the two houses of parliament sit in joint session as a National Assembly for constitutional revision, a majority of the Assembly being essential for an act of amendment. In Germany the bill for amendment passes the usual legislative processes in the two houses, but in the *Bundesrath* must have less than 14 adverse votes (out of 58). This is practically equivalent to the American requirement of the assent of three-fourths of the states, since the *Bundesrath*, like the American Senate, represents the commonwealths—the commonwealths, however, not being equal, as in the United States, but varying in voting strength on the basis, mainly, of certain historic considerations.

It is advisable that the organic law should be subject to change, in order to make improvements which experience may warrant, or to meet conditions unforeseen at the outset. On the other hand, the fundamental law should not be subject to constant fluctuation of public sentiment, but should be susceptible of change only as the result of the matured and tested judgment of the political state.

Federal and Unitary.—Constitutions are federal or unitary, according to the nature of the state. This is not a question merely of the government—if the federal system is provided by the constitution, it is beyond reach of the power of the government, and can be changed only by a change in the constitution itself. A federal constitution naturally provides for a federal system of government.

The United States being a federal state has a federal constitution. The general Government has only powers granted in the Constitution, either expressly or by implication. The Constitution was enacted, and is subject to change, by the commonwealths. The sovereign power, therefore, resides ultimately, in the commonwealths—in other words, in the people of the republic organized in commonwealth groups. But the commonwealths exercise this sovereign power in enacting organic law, not by a majority only, but by three fourths of their whole number. It is in the commonwealths, thus voting, that the residuary powers of government rest, as has been noted above. In this view of the case the commonwealths are sovereign, not individually, as was held by South Carolina in 1860, but collectively, acting in an orderly way by a three-fourths vote (*see* UNITED STATES AS A FEDERAL STATE).

The German Empire is a federal state, and has a federal constitution (*see* GERMANY, FEDERAL ORGANIZATION OF). As in the United States, sovereignty, and thus the residuary powers of government, rest in the commonwealths collectively, the relative weight being by no means equal. There are also specific limitations on the sovereign power in the interest of a few of the commonwealths.

The constitution of France is unitary. The central legislature at Paris is the source of all law, and the constitution itself can be changed by enactment of a joint convention of the two houses, on a majority vote.

A unitary constitution provides greater uniformity throughout the state and may imply more rapid and effective governmental action than in the case with a federal constitution. But a federal constitution permits greater freedom and diversity throughout the state, thus allowing different localities to suit their legal system to their particular needs, and to test such new ideas as they may consider worthy of experiment. The essence of local home rule is that any given community may wisely be left to manage in its own way its own affairs, so long as there is no interference with the general interests of the state. In a federal constitution the commonwealths reserve such powers, and should entrust to the central government only matters of a general character. A federal constitution, therefore, is enacted by a group of commonwealths and has largely in view the preservation of their local

liberty. A unitary constitution is enacted by the state as a whole, and has primarily in view the effectiveness of the central government.

General and Detailed.—Constitutions are general or detailed, according to the scope of their contents. The tendency is to make the fundamental law more detailed as more and more things are conceived as so important as to require being put beyond the reach of ordinary change. The first constitution of the state of New York, adopted in 1777, contains approximately 9,800 words. The constitution of that state, adopted in 1894, contains approximately 28,000 words.

Monarchical and Republican.—Constitutions are monarchical or republican, according to the provision for the head of the state. A monarchical constitution provides for a hereditary head, usually designated as emperor, king, or prince. A republican constitution provides for a head chosen for a definite term, usually designated as president. So far as actual power is concerned, this difference is rather in form than in essence. In fact, the President of the United States exercises considerably more extensive power than most constitutional monarchs.

See Cabinet Government; Congressional Government; Constitution in the British Sense; Constitution-Making in the United States; Constitution of the United States, Growth of; Constitutions, State, Characteristics of; Constitutions, State, Growth of; Constitutions, State, Limitations in; Democracy; Dual Government; Government, Theory of; Law, Constitutional, American.

References: C. Borgeaud, *Adoption and Amendment of Constitutions* (1895); J. Bryce, *Am. Commonwealth* (4th ed., 1910), "Constitutions" in *Studies in Hist. and Jurisprudence* 1901), I; J. W. Burgess, *Pol. Sci. and Comparative Constitutional Law* (1891), II; T. M. Cooley, "Comparative Merits of Written and Unwritten Constitutions" in *Harvard Law Review* II, 341; W. F. Dodd, *Modern Constitutions* (1909); J. W. Garner, *Intro. to Pol. Sci.* (1910), 373–402; A. Hamilton in *The Federalist* (various editions,—1862, 1893 etc.); H. P. Judson, "Essential Elements of a Written Constitution" in Univ. of Chicago, *Decennial Publications* (1903), IV, 311–353; A. L. Lowell, *The Government of England* (1908); J. Story, *Commentaries on the Constitution* (4th ed., 1873, 5th ed., 1891); W. W. Willoughby, *Constitutional Law* (1910), *The Am. Constitutional System* (1904); H. Sidgwick, *Elements of Politics* (1897).

Harry Pratt Judson.

CONSTITUTIONS, GROWTH OF. The essential idea underlying the term constitution is the notion of a fundamental law for a state. This fundamental law may be written or unwritten but should include, (a) the form of the organization of the state, (b) the extent of power intrusted to its various governmental agencies, and (c) the limitations that may be placed on the exercise of these powers. Among these limitations on governmental authority may be the many guaranties of personal rights in life and property that collectively are known as a bill or declaration of rights, such as those of England, France and the United States of America. The term fundamental includes historically three rather distinct ideas. (1) It may, as in Graeco-Roman civilization, emphasize broad principles of right, natural or divine, as a basis for political authority. (2) It may lay stress on personal rights and on a governmental system established, as in England, through the slow growth of custom. (3) It may emphasize the notion of a supreme law, promulgated as a command by some sovereign authority, as an autocratic ruler, or the "sovereign people." Such a command may embody many fundamental provisions based on custom, and may also include others based on well established ethical principles or on newer theories of political progress.

Obviously, every state has a constitution in the sense that it has a governmental organization making use of the sovereign powers of the state, and recognizing more or less completely the personal rights of its subjects. In a state characterized by static civilization its constitution reflects the fixed standards and practices of its people. Naturally such a constitution is unwritten and whatever slight variations in theory may be needed can readily be supplied through the agency of interpreters and commentaries, or through the edicts of its monarch. If, however, conditions within a state should be powerfully modified through some economic revolution with its consequent class struggles, or through war followed by conquest or subjugation, there would inevitably result a demand for some restatement of the fundamental law so as to incorporate into it the needed modifications. In this way came the twelve tables of Roman law; the charters of the English Norman kings culminating in the Magna Charta; the "Golden Bull" of Hungary in 1222; and the constitutional changes brought about through the English revolutions of the seventeenth century, and the American and French revolutions of the eighteenth and nineteenth centuries.

These really fundamental changes are usually written, for precaution's sake, though the formal written constitution traces its origin to the Cromwellian period of English history and to the charters of the North American colonies. The suggested basis for a constitution contained in the Agreement of the People, and the modification of it actually adopted and put in force, the Instrument of Government, both emphasized the thought of a fundamental law aiming to secure the "common

right, liberty and safety" of the people. The fundamental nature of this law is evidenced by the fact that, unlike a statute, it was not to be subject to amendment or revision by either Parliament or the executive through the ordinary processes of law-making. This principle of a written "law paramount" reappeared in the American colonies during the revolution of 1776, passed into France during its revolution, and from these two centers it has spread to other states and become the prevalent form of constitution.

Modern written constitutions may be classified under three headings. (1) They may be grants or charters from an autocratic monarch, such as, for example, the Japanese constitution of 1889 or the Russian fundamental law promulgated by the Czar in 1906. These, if amended, would naturally be altered by imperial decree. In general such constitutions come as concessions forced from unwilling hands through revolution or through strenuous class struggles, whenever autocratic systems become tempered with democracy through commerce and education. (2) They may be agreements or compacts of federations, made either between a national government and its component federated parts, or between commonwealths forming themselves into a federal state; the constitutions of Germany and Switzerland are illustrations of this class. Amendments to such constitutions are naturally made by the joint consent of the contracting parties. Federal constitutions, as a rule, admirably illustrate the "principle of nationality" since the component parts, formerly sovereign states, become united into a national federation under the powerful stimulus of a kindred civilization and common economic interests. (3) They may be constitutions considered as emanating from the people, who are voiced by the electorate or by its delegates assembled in convention.

If a fundamental law is prescriptive, it slowly changes through accretion and interpretation; if written, it may, by chance, include no provision for its amendment or may even include a provision forbidding change. Yet under the rapidly changing conditions of modern political life alterations inevitably become necessary. This need has been met in strongly democratic states by the introduction of an article into the constitution making provision for amendment or revision. Failing such an article, needed changes would presumably be made through the sovereign governental authority, whether monarch, parliament, or electorate, or through some combination of these. The procedure for constitutional changes also becomes flexible in proportion as the popular will dominates. Thus in radically democratic countries the method of amendment differs from statutory legislation merely in that it requires a slower procedure and a larger fractional vote for initiation and ratification. Amendments may even be initiated by a fixed per cent of the electorate and then referred to the whole body for approval or rejection. Similarly under democratic conditions constitutions may be amended or revised not through the usual legislative body acting as a constituent assembly, but preferably through a special body elected for that purpose only—the constitutional convention (*see*) as developed in the United States of America.

See CONSTITUTION IN THE BRITISH SENSE; CONSTITUTION MAKING IN THE UNITED STATES; CONSTITUTION OF THE UNITED STATES, AMENDMENTS TO; CONSTITUTIONAL CONVENTION; CONSTITUTIONS, CLASSIFIED; CONSTITUTIONS, STATE, AMENDMENT OF; FEDERAL STATE; LAW, CONSTITUTIONAL, AMERICAN.

References: C. Borgeaud, *Adoption and Amendment of Constitutions* (1895); J. Bryce, *Studies in Hist. and Jurisprudence* (1901–04); J. Q. Dealey, *The Development of the State*, (1909), Pts. III, IV; S. R. Gardiner, *Constitutional Documents of the Puritan Revolution* (1889); C. S. Lobingier, *The People's Law* (1909). JAMES Q. DEALEY.

CONSTITUTIONS, STATE, AMENDMENT OF

Necessity of Amendment.—Since constitutions, like other forms of law, are the outgrowth of conditions, it is necessary that they be modified as the conditions which produced them change. On the other hand, stability is a desideratum in law and especially in constitutions. The amending process in every constitution is an attempt to insure stability while at the same time making necessary changes possible. The amendment of the Federal Constitution is difficult, but since its language is brief and general, frequent change is unnecessary. But the state constitutions are very detailed They contain many provisions of a purely statutory nature. This fact, together with the rapid political and social changes which are so characteristic of American life, necessitates frequent alterations. In the course of the Revolution all the colonies save Rhode Island and Connecticut, on the recommendation of Congress, adopted new constitutions. Naturally, instruments so framed were defective —one of the chief defects of several of them being that no provision was made for their amendment. But every state constitution now in force makes some provision for this purpose.

Methods; Constitutional Convention.—Three well-defined methods have been developed. (1)

The first, which is the usual method for a general revision, is by means of a constitutional convention (*see*)—a body of delegates especially chosen for the purpose of framing a constitution and having no other function. This is provided for in all but twelve states, and even in these, a convention may be called by the legislature. Of those which provide for a convention, some require the question as to whether a convention shall be called to be submitted to the people periodically, or at a specified time, or whenever the legislature so chooses; while a few authorize the legislature to call a convention whenever it sees fit. If the people vote in favor of a convention, it is the duty of the legislature to provide for its election, but as this has sometimes not been done, two constitutions (New York, 1894, and Michigan, 1908) contain self-executing provisions whereby a convention when ordered by the people may assemble, deliberate and submit its work to the people without any action whatever on the part of the legislature. Many constitutions contain detailed regulations concerning the number of members, time and method of election, qualifications for membership, apportionment of representation and the compensation to be paid to members.

Legislative.—(2) In all the states except New Hampshire amendments may be proposed by the legislature. This is the usual method of making isolated changes. The vote required is usually greater than that required for ordinary legislation, the rule being a majority of all the members elected to each house, or two-thirds or three-fifths of each house. An amendment may be submitted to the people in thirty states by the action of one legislature only; in fourteen others it must have the approval of two successive legislatures. In Delaware an amendment accepted by two-thirds of each house in two successive legislatures becomes a part of the constitution without submission to the people. In Mississippi and South Carolina an amendment submitted by the legislature and approved by the people must be ratified by a second legislature before final adoption. While there is a marked tendency to simplify the process, the action of the legislature is still subject to many restrictions, some of which limit the number of amendments that may be proposed at one time, specify the interval which must elapse between amendments, require that when two or more are submitted together voters must be allowed to vote separately on each, etc. In none of the states is the action of the legislature submitted to the governor for his approval. Whether an amendment has been adopted in accordance with constitutional requirements is a judicial question, and proposals which have been ratified by the people may be set aside by the court (State *vs.* Powell, 77 *Miss.* 543, 1900; McConaughy *vs.* Secretary of State [of Minnesota], 106 *Minn.* 392, 1909).

Popular.—(3) Since 1902 several states allow amendments to be initiated by the people. This may be done by a petition signed in Oregon by eight per cent of the voters, in Missouri by eight per cent of the voters in two-thirds of the congressional districts. In Michigan such petitions must be submitted to the legislature which may, in joint convention, by a majority vote of all the members elected, disapprove the proposal, in which case it is not submitted to the voters. This mode of amendment by popular initiative has been adopted in some form in nearly half the states (*see* INITIATIVE).

Frequency of Amendment.—In the decade 1899–1908, as many as 471 amendments were submitted to the people for adoption. Of these 296 were adopted, while 175 failed. They were unevenly distributed among the states, 51 having been submitted in California, 50 in Louisiana, 30 in Missouri, 22 each in Oregon and Michigan, 21 in Florida, and 17 each in Colorado and Texas. On the other hand, in the same period, Massachusetts and North Carolina submitted but one each, and Vermont submitted none. The number of changes submitted is somewhat affected by the ease or difficulty with which amendments may be adopted. The constitution of Indiana is practically unamendable, and but three changes were proposed in the decade 1898–1908. Since a legislature feels no responsibility for the final result, it is but too ready to embody any controversy in a constitutional amendment and submit it to the people. This is encouraged by the rapid growth in recent years of sentiment in favor of the referendum (*see*). The fact that the governor's approval is not required has the same tendency. But most amendments are the product of necessity. The legislatures are so restricted by constitutional provisions that needed changes can be made in no other way. So long as state constitutions are made to resemble a volume of statutes, frequent amendment is unavoidable. Louisiana adopted an elaborate constitution in 1898 and within the next decade 50 amendments to it were proposed. Oklahoma, in 1907, adopted a constitution more detailed than that of any other state, and in 1908 three amendments were proposed. Changes which could be accomplished in many states by statute can be made in such states as California, Louisiana and Oklahoma only by amending the fundamental law.

Ratification of Amendments.—The process of ratification is in general more difficult than the proposing of amendments. In all the states but Delaware amendments proposed by the legislature must be submitted to the people for approval, and in most of the states amendments or new constitutions proposed by a constitutional convention must likewise be submitted. As a rule the approval of a majority of those voting on the amendment is sufficient

for adoption, but in several states the approval of a majority of all those voting at the election at which the amendment is submitted is necessary. In such states the adoption of amendments is extremely difficult, for voters are indifferent to most amendments. Of the 449 amendments submitted in the decade 1898–1908 for which complete data are available, 310 were voted upon by less than 60 per cent of the voters who went to the polls, 239 by less than 50 per cent, and 37 by less than 25 per cent. Of the 296 which were adopted in that decade, only 68 received the approval of a majority of the voters who participated in the election. On the other hand 41 received a majority of the votes cast on the amendments, but failed because the vote was too small a proportion of the total vote cast at the election.

Indifference of the People.—Several reasons may be assigned for this indifference. One is the trivial character of many of the amendments. This cannot always be avoided since the amendment must frequently be as trivial as the clause of the constitution to which it applies. But it is not surprising that the whole body of voters manifests little interest in such local questions as the granting of authority to New Orleans to issue bonds for the construction of a belt railway, or the salary of the circuit judge in Genesee County, Michigan, or the authorization of certain taxes in St. Louis, or the permitting of additional polling places in certain towns of New Hampshire. Some questions always produce a full expression of opinion, as the suffrage question in the South, where from 82.6 to 97.7 per cent of all those who voted for state officers voted on the amendments submitted between 1900 and 1908, or the prohibition of the liquor traffic in states having constitutional prohibition. But so large a proportion of the amendments deal with questions which are comparatively unimportant or of merely local interest that the surprising feature of the action of the people on them is not that so few vote upon them but that so many do. Another reason for the small vote is the absence of discussion. The proposed amendment is seldom debated at any length from the platform or in the press, and if there has been a full discussion in the convention or legislature the argument is forgotten by the time the amendment reaches the people. Furthermore it is always difficult to arouse interest in an abstract proposition, the relation of which to the average voter is not immediately apparent. A political issue is easily identified with a leader whose personality arouses enthusiasm, but a constitutional amendment usually stands or falls on its merits alone.

Devices for Insuring Ratification.—Those states whose constitutions can be amended only with the approval of a majority of all the voters participating in the election have adopted several ingenious devices to insure an expression of opinion on the amendments proposed. Alabama enacted in 1898 that the words "For Birmingham Amendment" should be printed on the ballot, and unless erased by the voter all ballots should be counted in favor of the amendment. By this device the inaction of the voters which had previously counted against the amendment was made to count in favor of it. A similar plan is employed in New Jersey. In Nebraska it is provided that a proposed amendment shall be printed on the primary election ballots of all political parties, and if a majority of the electors of any party voting upon such amendment shall declare for or against it, such declaration shall be considered a portion of the party ticket. Under this system a voter who casts a straight party ticket votes for his party's action on the amendment. This system was employed in Ohio from 1902 to 1908 and its working was well illustrated in the election of 1903. Five amendments were submitted. Two had been endorsed by both the Republicans and Democrats and received the general support of both. One had been endorsed by the Republicans and was opposed by the Democrats. The former were victorious in the elections and the amendment was adopted. To another amendment the Republicans invited "careful consideration" while the Democrats supported it. This was lost. But most significant of all, the fifth amendment had the endorsement of neither party and only 53,774 voters out of 877,203 expressed any opinion on it. This was most conclusive evidence of the effect of party action.

Publication of Amendments.—Most of the states require proposed amendments to be published. The time and manner thereof are generally determined by the legislature, and the usual practice is to publish in the newspapers. The total failure of this device for attracting the voters' attention has led several states to attempt to reach the individual voter. Thus, in California, a pamphlet containing a brief statement of the arguments for and against each amendment is sent to each voter. A modification of this plan is followed in Oregon, Montana, Missouri and Oklahoma. It has not yet been in use long enough to test its efficiency. Another device for bringing amendments to the attention of voters is the separate ballot. When an amendment is printed on the ballot with the names of candidates, it is likely to be overlooked. Presentation on a separate ballot calls the amendment directly to the attention of the voter and sometimes results in a larger vote.

See Bills of Rights; Constitution Making in the United States; Constitution of the United States, Amendments to; Constitutional Convention; Constitutions, State, Characteristics of; Initiative; Legislation, Direct; Referendum.

References: C. Borgeaud, *The Adoption and Amendment of Constitutions* (1895); J. A. Jameson, *A Treatise on Constitutional Conventions: Their Hist., Powers, and Modes of Proceeding* (4th ed., 1887); E. P. Oberholtzer, *The Referendum in Am.* (1900); W. F. Dodd, *The Revision and Amendment of State Constitutions* (1910); J. W. Garner, "Amendment of State Constitutions" in *Am. Pol. Sci. Review*, I (1907), 213–247; A. L. Lowell, *Popular Gov. and Public Sentiment* (1913); C. S. Lobinger, *People's Law* (1909). Lawrence B. Evans.

CONSTITUTIONS, STATE, CHARACTERISTICS OF

Types of Constitutions.—There are, in the United States of America, forty-eight states or commonwealths each with its written constitution (1913). Many states have had several constitutions in the course of their history and altogether about two hundred have been formulated since 1776. The present constitutions may be classed into four distinct sets: the six constitutions of the New England states of which that of Massachusetts is the best (*see* states by name); seven constitutions formulated during the twenty-five years preceding the close of the Civil War, these are democratic in spirit but are in need of revision; twenty-five constitutions made or revised since the war, representing readjustments necessitated through reconstruction or through newer economic conditions; and finally the ten constitutions of the new mining or agricultural states west of the Mississippi, admitted since 1889. The radicalism prominent in this section of the country may best be seen in the constitutions of Oklahoma and Arizona, and in the many amendments introduced since 1902 into the constitutions of Oregon and of California.

The subject matter of state constitutions has been largely patterned after three types; the state constitutions of the revolutionary period, the National Constitution, and the Northwest Ordinance of 1787. Congress in its "enabling acts" authorizing territories to formulate state constitutions has regularly required the insertion into new constitutions of the fundamentals of this famous ordinance, including provisions for general education, freedom of speech, and religious belief, a liberal suffrage and a popular basis for representation in legislature or convention. Through such requirements, and through amendments and revisions, the constitutions of all the states are steadily broadening into a common type.

Formulation of Constitutions.—The earliest constitutions were made by revolutionary assemblies usually acting also as legislatures for statutory purposes. Massachusetts, however, in 1780 called into existence a convention for the express purpose of framing a constitution. This device became popular and the constitutional convention is now regularly used either to make a new or to revise an old constitution (*see* Constitutional Convention). As a rule the members of this body represent districts of substantially equal population. Constitutions now usually provide, with more or less detail, for the calling of a convention in case a revision be needed, but should such a provision be omitted, the legislature by precedent has the power either to call a convention or to submit a referendum to the electorate asking whether or not a convention shall be called. With few exceptions amendments as distinct from revisions, are regularly initiated by the legislature and referred to the electorate for approval or rejection. Under the leadership of Oregon, in 1902, amendments in several states may now be initiated by the electorate (*see* Referendum). Amendments initiated by the legislature as a rule require a two-thirds vote of the membership of each house taken by yeas and nays. They must also, in most states, receive at the polls an affirmative vote of a "majority of those voting thereon." On several occasions legislatures have authorized commissions to recommend amendments. In general this method has not proved successful in results. The last instances of this sort occurred in Rhode Island (1912) and in Vermont, whose commission, appointed in 1908, reported early in 1910 a series of amendments (see Vermont).

Length.—The earliest of state constitutions, that of New Hampshire, was very brief, having about nine hundred words, and no one of the earlier set exceeded five thousand words. Since that time constitutions have steadily lengthened and at present the shortest (Rhode Island) has about six thousand words, the longest (Oklahoma) has about 60,000 and the average is about 16,000. Of three late constitutions, that of Michigan has about 17,000 words and those of New Mexico and Arizona each about 22,000 words. For this increase in size two conditions are mainly responsible. (1) Governmental organization is much more complex and its functions are more numerous than formerly, so that conventions deem it necessary to insert provisions in respect to departmental organization and in regulation of great economic interests. (2) Charges of incapacity and corruption are so commonly made against legislators, that a convention feels in duty bound to place as many limitations and prohibitions as possible on legislatures, and hence it inserts into the constitution many provisions statutory in kind and often detailed to the extreme of pettiness. Louisiana, for instance, has a twelve thousand word article on the judiciary; Virginia devotes 7,000 words to cor-

porations, and Oklahoma uses 12,000 words to define the boundaries of its many counties.

Essential Parts of a Constitution.—A constitution regularly consists of: (1) a preamble, an enacting clause, a ratification clause with signatures, and often a schedule containing provisions of temporary importance; (2) the main part of the document contains a bill of rights, an article on suffrage and elections, on amendment or revision, on miscellaneous provisions, and articles on the several divisions of government and departments of administration.

All of the existing constitutions contain formal bills or declarations or rights (*see* BILLS OF RIGHTS) as limitations on legislative authority. These in general are based on the type developed in the Revolution but have been enlarged in the light of later experience by the insertion of new provisions or by the modification of older ones. All bills of rights provide for full freedom in religion but a few constitutions still retain some slight religious qualifications for office-holding, though these are in practice obsolete. There are no longer any religious restrictions on the exercise of the suffrage. Subject to the restrictions contained in the national constitution the states determine what rights of suffrage may be exercised by their citizens and these rights are always placed in the constitutions (*see* SUFFRAGE). From the Revolution down to 1870 the trend was entirely in the direction of full manhood suffrage on the attainment of twenty-one years of age. Since that date restrictions of various sorts have crept into state constitutions, so that at the present time the ratio of voters to population varies considerably in the several states. Nine (1913) grant to women voting privileges on the same terms as to men and these states naturally have a relatively large electorate (*see* WOMAN SUFFRAGE). Restrictions usually take the form of requirements for a registration in person, the prepayment of a poll tax, an educational qualification (eight states), and a property qualification with education as an alternative (in six other states). A combination of such restrictions, rigorously enforced in a few of the southern states, has reduced the votes cast to less than ten per cent of the population of those states. Most states, however, have comparatively few restrictions of any consequence on manhood suffrage, and usually poll from twenty to twenty-five per cent of their population. Eight states allow aliens to vote who have declared their intention of becoming citizens of the United States, so that these participate even in national elections (*see* PRESIDENTIAL ELECTIONS).

Framework of Government.—Constitutions regularly contain a short article formally separating the three historic departments of government. Though the departments themselves are thus separated, the functions which each should naturally perform are not necessarily assigned to their respective departments. The legislature, for instance, regularly has a large control over administration; the governor's veto is a powerful factor in shaping legislation; the electorate fills many offices through elections and assists in lawmaking through the initiative and the referendum; and the judiciary is a constant check on the other two departments through its regulative supervision over ministerial and administrative actions, and through its power to render the final decision as to the constitutionality of state statutes in cases involving the meaning of the constitutions of the states (*see* COURTS AND UNCONSTITUTIONAL LEGISLATION).

In this connection should be made clear the relationship between the constitution as law and the authority of the legislature in lawmaking. In formulating law a legislature is supposed to be bound by the provisions of the constitution since these are mandatory. Should legislation of doubtful constitutionality be passed, the supreme court of the state in a case brought before it on appeal, decides whether or not the legislation is in accord with the provisions of the constitution and this decision is final. In practice there are three possibilities when provisions of the constitution may be deemed directory rather than mandatory. (1) A constitution may command a legislature to pass legislation of a certain sort, *e. g.*, a direct primaries bill, but there is no authority in the state that can compel the legislature to formulate and pass such legislation. (2) If a legislature passes the required legislation but not in strict accord with the provision of the constitution, the court may refuse to consider the question, on the ground that it would seem to be interfering with the discretionary power of a coördinate department. (3) A constitution often includes procedure for the passage of bills, requiring *e. g.*, that a bill be read in full at least once (*see* BILLS, COURSE OF). Should a legislature, under the plea of necessity, ignore such procedure, the court would probably assume that if such legislation has been properly signed and attested by the officers of the other departments of government it has been passed in due form. These three possibilities are real problems in constitutional theory, with varying opinions and decisions on either side. It seems reasonable to hold, however, that the mandatory character of the constitution becomes in practice directory in certain aspects, through lack of an authority to enforce its commands.

The Legislative Department.—Of the three departments constitutions naturally devote most attention to the legislative (*see* LEGISLATURE). Under the National Constitution powers not delegated to the federation nor prohibited to the states are reserved to the states (Amendment X). This reserved power may be exercised in each state by its legislature, subject only to such limitations as

may be exercised in each state by its legislature, subject only to such limitations as may be placed upon it by the local constitution, and excepting those powers delegated to the other departments of government. These limitations and delegations were few and insignificant during the revolutionary period of American history, but since that time there has been a steadily increasing tendency to restrict in every possible way the enormous powers of legislatures. In general the length of a constitution indicates the amount of restriction placed on law-making. Every article in the constitution that fixes the organization and powers of a department of administration or division of government, or defines a policy in regard to important interests, is to that extent a restriction on legislative discretion. Yet in the newer constitutions one may expect to find lengthy articles on the judicial and administrative departments and much regulation of taxation, finance, land, mines, corporate interests and labor, as well as local government, education, elections, and the suffrage. In addition to these provisions there are lengthy lists of prohibitions against special or local legislation and often a mass of petty detail entirely out of place in a constitution (*see* CONSTITUTIONS, STATE, LIMITATIONS IN).

The Executive Department.—The executive of the early period under the constitutions of the states occupied a position of honor and dignity but had almost no power. Throughout the nineteenth century and especially since the Civil War conventions and amendments have tended to enlarge the powers of governors chiefly in two directions: (1) by giving to the governor a steadily increasing, though still incomplete, supervisory control over the departments of administration; (2) by entrusting to him a veto power over legislation which in about two-thirds of the states extends even to the items of appropriation bills (*see* EXECUTIVE). The referendum (*see*), now so common, is of course a form of popular veto on both executive and legislative action. The number and function of the administrative departments vary with the amount of population and kinds of economic interests in the state. Constitutions regularly specify what departments must be organized, what powers they may exercise, how their heads shall be elected or appointed and for what terms.

Besides the permanent departments many constitutions name and define the organization and powers of numerous boards, commissions and bureaus, each devoted to some special phase of general welfare or to the supervision of the larger economic interests of the state, such as banks and public service corporations. Control over administration is usually vested in the legislature; but, as already noted, there is a decided tendency to transfer to the governor a larger supervision and control over the entire administration of the commonwealth (*see* GOVERNOR). In state administration there is no system of administrative law and judicial procedure coördinate with the regular judicial system, such as prevails on the continent of Europe. Every state administrative officer is subject to the jurisdiction of the regular courts, nor can he claim immunity because of his official position but is held responsible for any acts performed in violation of the law of the land.

The Judicial Department.—The earlier state constitutions left power over judicial organization and functioning almost entirely to the discretion of legislatures. The reverse is now true (*see* JUDICIARY). Conventions, filled with distrust of legislatures, regularly outline with great detail the organization and functions of this department of government, so as to remove it beyond the power and control of the law-making body. Then, too, the rapid increase of population and wealth, modern social unrest, together with democratic fondness for litigation, all combine to make popular control over the judiciary a matter of primary importance. Constitutions therefore include provisions in respect to the organization of the three usual grades of courts (the supreme, district, and petty), the jurisdiction of each of these may be fully defined, the procedure of trials to some extent regulated, especially in respect to the jury, and occasionally a few limitations on judicial authority or interpretation may be added, such as definitions as to what constitutes libel, safeguards against an unfair use of eminent domain, and limitations on the court's power to issue injunctions or to punish for contempt. The judiciary in about four-fifths of the states is made elective at the polls, and is subject to popular recall in three states: Oregon, Arizona and California.

In conclusion it may be said that much improvement in content, phraseology and form could be made in existing state constitutions. Ambiguous and contradictory wording is frequent, obsolete provisions are retained, petty details are entirely too numerous, clearness and terseness are rare qualities, and a more logical arrangement of the several articles is sadly needed. More than half of the constitutions could be shortened at least a third without the omission of anything material and with a positive gain in exactness of statement. Yet the constitutions as a whole, with all these shortcomings, are wonderfully interesting when studied comparatively, and contain in their *ensemble* the best contributions made to political philosophy by the United States. They are in local government what the national Constitution, the *Federalist*, and the decisions of the Supreme Court are in national matters, and collectively they form by far the best material for the study of the growth of democracy in the several commonwealths of the United States.

See CONSTITUTIONS, STATE, LIMITATIONS IN; ELECTION SYSTEM OF THE UNITED STATES; EXECUTIVE AND EXECUTIVE REFORM; EXECUTIVE POWER, THEORY OF; GOVERNMENT, THEORY OF; GOVERNOR; JUDICIAL POWER, THEORY OF; JUDICIARY AND JUDICIAL REFORM; LEGISLATIVE POWER, THEORY OF; LEGISLATURE AND LEGISLATIVE REFORM; MINORITIES, RIGHTS OF; POPULAR GOVERNMENT; REPRESENTATIVE GOVERNMENT; SEPARATION OF POWERS; STATE DEPARTMENTS, HEADS OF; STATE EXECUTIVE; STATE GOVERNMENTS, CHARACTERISTICS OF; STATE JUDICIARY; STATE LEGISLATURE; STATE, THEORY OF.

References: S. E. Baldwin, *Modern Political Institutions* (1908), ch. iii (1898); Charles Borgeoud, *Adoption and Amendment of Constitutions in Europe and America* (1895); J. Bryce, *American Commonwealth* (4th ed., 1910), Pt. II; J. Q. Dealey, *Our State Constitutions* (1907); W. F. Dodd, *Amendment, and Revision of State Constitutions* (1910); H. Hitchcock, *Am. State Constitutions* (1887); J. A. Jameson, *Constitutional Convention* (4th ed., 1887); C. S. Lobingier, *The People's Law* (1909); *Michigan Constitutional Convention* (1907), a digest of excerpts from state constitutions; W. C. Morey, "First State Constitutions" in Am. Acad. of Pol. and Soc. Science, *Annals*, Sept. 1893, 201, 232; J. Schouler, *Constitutional Studies, State and Federal* (1897); F. J. Stimson, *Law of the Federal and State Constitutions of the U. S.* (1908); F. N. Thorpe, *Federal and State Constitutions* (1909), with bibliography, *Constitutional Hist. of the Am. People* (1898); J. B. Phillips, *Recent State Constitution Making* (1904); *Am. Year Book, 1910, 1911, 1912,* and year by year; J. H. Newman, Ed., *Digest of State Constitutions* (1912).

JAMES Q. DEALEY.

CONSTITUTIONS, STATE, LIMITATIONS IN

Early Principles.—The principle of the supremacy of Parliament was a fundamental one in English governmental practice at the time of the American Revolution. A law enacted by Parliament was not subject to be questioned by the courts or by any other organ of the government. This principle of legislative supremacy was one which in fact existed in the American colonies before the Revolution, and no colonial court is known to have assumed power to declare invalid an act of a colonial legislature. Colonial laws were, however, subject to a check in that they might be disallowed by the British Crown, or held invalid by the Judicial Committee of the English Privy Council as repugnant to the laws of England. Colonial legislation was, therefore, subject to a definite supervision, not on the part of an organ of the government in the colonies, but by an organ of the superior government.

The revolutionary constitutions, aside from the provisions of their bills of rights (*see*), imposed practically no limitations upon the legislatures, and the general principle of constitutional construction in the states is, and always has been, that the state legislatures have all powers not denied to them by constitutional provisions. Nor should it be assumed that the provisions of the bills of rights formed at first legally enforceable restrictions upon the legislatures. The theory of legislative supremacy was probably held by the framers of the instruments of government of 1776–1777, although at the same time the framers of these constitutions held the view that a statute violative of natural right was void. However, the principle of the superiority of a constitution over statutes had become fairly well recognized, and is definitely stated in several of the constitutions.

In addition, several of the constitutions recognized the superiority of constitutions over statutes by providing a special method for the alteration of the constitutions. But no organized machinery had yet been provided by which the constitutional provisions should be enforceable, should the legislature overstep the limits set by the constitution.

The framers of these constitutions, supported by the political theories of the time, believed in the supremacy of the constitution over legislative acts, and in several cases sought to devise machinery to enforce such superiority and to keep the legislature, which in the first constitutions was the most powerful organ of government, within the limits prescribed by the constitution. For example, Pennsylvania and Vermont established councils of censors, to be elected once every seven years, one of whose important duties it was "to recommend to the legislature the repealing of such laws as appear to them [the censors] to have been enacted contrary to the principles of the constitution." The Massachusetts constitution of 1780 provided for a popular vote in 1795 upon the question of calling a convention, and one of the functions of this body, if assembled, was "to correct those violations which by any means may be made" in the constitution; and the New Hampshire constitution of 1784 had a similar provision except that here the vote upon the holding of a convention was to be had within seven years.

By these means the framers of the revolutionary instruments of government sought to construct some machinery to restrain violations

of the constitutions by the legislatures or other organs of government created by such constitutions. Clearly these early constitutions did not contemplate an exercise of power by the courts to declare invalid laws which in the opinion of the judges conflicted with the terms of the constitutions. But from the New Jersey decision of Holmes *vs.* Walton in 1780 the courts gradually established such a power, and their authority to enforce limitations of the constitution as against the other departments of government obtained full recognition as a fundamental principle by the end of the first quarter of the nineteenth century.

Growing Distrust of Legislatures.—Within a very short time after the first state constitutions were framed, popular distrust of the legislatures began to manifest itself, and these state legislatures, it should be repeated, were bodies whose powers were limited to a very slight extent. The development of judicial power to declare laws unconstitutional is, itself, in part, one of the first fruits of this early distrust of legislatures. The disfavor in which state legislatures were held grew rather than diminished, and forms one of the primary forces in the development of state constitutions. Each new generation since the framing of the first constitutions has seen a new series of limitations upon the legislative power inserted into these instruments, and such restrictions, under the established principles of judicial power, become enforceable by the courts. State constitutions are now in large part composed of two classes of provisions: (1) express limitations upon the legislative power or upon the manner in which legislatures shall act: (2) provisions regulating in some detail matters which had previously been under legislative control, such matters being thus taken out of the hands of the legislative bodies. Provisions of this character reduce legislative power just so much, and may therefore be treated as indirect limitations upon the legislative bodies.

The limitations of this second class are referred to only incidentally here, and this article is devoted primarily to direct or express limitations upon legislative action. The tendency of the people, by constitution-making, to limit their legislatures strictly or to place any regulation which they think important in the constitution itself, may be exaggerated, but there is much truth in Professor Dealey's statement that "Whenever, through sudden changes in conditions, a legislature unexpectedly developes large discretionary power in statute making, the next convention in that state settles the principle itself, and thereby adds another limitation to legislative initiative."

The limitations upon legislative power now in state constitutions have developed gradually, new sets of restrictions being added as legislative abuses or political conditions seem to make them necessary. Only the more important of such limitations may be referred to here, and even these must be treated in summary fashion. As suggested above, the later state constitutions are, to a very large extent, composed of express or implied limitations upon legislative power. In the Alabama constitution of 1901, for example, of the 287 articles, 36 are devoted to a declaration of rights, about 30 others to legislative procedure and related matters, and eight to a detailed enumeration of matters with respect to which local and special legislation is forbidden or strictly regulated. In addition, a very large part of the rest of the constitution is devoted to matters which in earlier days were subject to legislative action. This is true of practically all recent constitutions, but less so of the Michigan constitution of 1908 than of others. For example, about one-fifth of the Virginia constitution of 1902 is devoted to a detailed regulation of corporations, and about an equal proportion of the Oklahoma constitution of 1907 is devoted to the same subject.

The more important of the specific limitations upon legislative action must now be discussed in some detail.

Bills of Rights.—This subject is considered elsewhere, as are also the various guaranties included in the bills of rights, but it should be suggested here that such limitations were the first to be inserted into state constitutions; and that the state bills of rights after 1789 and 1791 were much influenced by, and copied from, the Federal Constitution and its first ten amendments.

Banking and Other Corporations.—Disastrous experiences of the states with banking, both by means of special charters to private banks and in the establishment of state banks, led to one of the earliest series of specific limitations upon legislative action (*see* BANKS AND BANKING, STATE). Illinois presents a fair example of constitutional limitations with respect to banking. The constitution of 1818 forbade the further issuance of bank charters, but authorized the creation of a state bank with branches; the constitution of 1848 forbade a state bank, imposed a special liability upon stock-holders in banks issuing notes, and provided that legislative acts authorizing the establishment of banks should not go into effect until after approval by the people at a general election; and the constitution of 1870 added a prohibition upon the creation of any corporation whatever by special act. In the period from 1845 to 1860 the practice of requiring that banking laws be submitted to a popular vote was adopted in most of the middle western states; and in some states the incorporation of banks was altogether prohibited, as in Texas, by the constitution of 1876. The various prohibitions which at different times have been placed upon the legislatures with respect to bank legislation have been imposed because of abuses previously existing, and have

accomplished little to prevent other abuses which have arisen later. There is a tendency to withdraw some of the limitations upon state bank legislation, although a few of the state constitutions now regulate the matter in some detail.

Grave abuses resulted also from the early policy of chartering private corporations by special act, and although some of the state legislatures had themselves adopted general incorporation laws by 1850, New Jersey in 1844 and Louisiana in 1845 were among the first definitely to put into their constitutions the provision that corporations should not be created by special laws. This example was immediately followed by a number of other states, until now most of the state constitutions require general incorporation laws. The decision of the Supreme Court of the United States in Dartmouth College *vs.* Woodward (1819) (*see* Dartmouth College Case), that corporate charters are contracts, is in large part responsible for the declaration in most of the state constitutions that such charters, when granted, shall be subject to alteration, amendment or repeal.

Numerous state constitutional provisions regarding foreign corporations, detailed regulations of rates and service of public service corporations, and limitations with respect to corporate combinations and trusts, have been of later introduction than the limitations referred to above, and have embodied into the constitutions much matter previously subject to control by the legislatures.

Financial Limitations.—In the article on constitution-making in the United States on another page, some reference is made to the development of (1) limitations upon the states' power to incur indebtedness and to aid in the construction of internal improvements, (2) a similar and later series of limitations upon municipal corporations and other civil divisions of the states. These limitations are directly traceable to the failure of the state internal improvements movement, and to the losses later resulting from the loan of municipal credit to railways and other similar enterprises. With respect to such matters, there has been a tendency during the past decade to withdraw rather than to strengthen these limitations. California, in 1902, gave its legislature power to establish and maintain highways, and Michigan, by a constitutional amendment of 1905, permits that state to improve or aid in the improvement of wagon roads. New York in 1905, Wisconsin and Illinois in 1908, enlarged legislative power to deal with land or water ways; and Missouri constitutional amendments of 1906 and 1908 permit counties and towns to levy taxes and contract debts for the improvement of roads and bridges.

Another class of financial provisions in state constitutions is traceable in part to the principle established by the United States Supreme Court in the case of New Jersey *vs.* Wilson (1812), where a legislative grant of exemption of land from taxation was held to be irrevocable. A number of state constitutions have expressly provided that the power to tax shall not be surrendered, and some by more general provisions provide that every franchise, privilege or immunity shall be subject to revocation or amendment.

Legislative Procedure.—The early state constitutions contained very little as to the procedure to be followed by the legislative bodies in the enactment of laws, although New Jersey, in 1776, required that every measure, in order to pass, should receive a vote of a majority of all representatives; and several constitutions of the same period required that a bill be read three times before passage, that the yeas and nays be entered in the journal upon request, and that a journal be kept and printed. Practically all of the state constitutions now contain numerous additional provisions intended to check legislative abuses. New Jersey, in 1844, required that each bill have but one subject, that subject to be expressed in its title, and this provision has been adopted by other states. And now the greater number of our more recent constitutions contain somewhat detailed provisions regarding the form and passage of bills, the time when bills may be introduced, the amendment or repeal of existing legislation, and the time when laws shall take effect.

Local and Special Legislation.—Reference has already been made to the prohibition of special acts granting charters to private corporations. Since North Carolina, in 1835, forbade special acts granting divorce a number of other states have introduced similar constitutional provisions.

Special and local legislation constituted before 1850 a very serious abuse of legislative power, and a means by which undue favoritism was shown to certain persons or interests in the community. This was true not only with respect to matters definitely private in character, but more particularly as regards municipal corporations and municipal franchises. The New Jersey constitution of 1844 is one of the first to enumerate in some detail the matters upon which special legislation is forbidden, and this plan has been copied by practically all constitutions framed since that time. The list of matters with respect to which special legislation is forbidden has gradually lengthened.

The Indiana constitution of 1851 contains a specific enumeration of matters upon which the legislature is forbidden to enact local or special legislation, and to this specific enumeration is added a requirement "that in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state." A number of other states have introduced similar provisions into

their constitutions. Such provisions have, however, been almost uniformly held to vest a discretion in the legislatures to determine for themselves as to the cases in which a general law can be made applicable. The Missouri constitution of 1875 took this matter out of the hands of the legislature and gave the courts an express power of supervision by declaring that "whether a general law could have been made applicable in any case is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject." Such a provision, vesting in the courts a control as to the necessity of special legislation, has in recent years been adopted by Minnesota, Alabama, Kansas, and Michigan. Michigan does not enumerate the specific items upon which special legislation is forbidden, but merely submits the question as to whether such legislation is necessary to the courts, and if the courts think the purpose of the legislation may be accomplished by general act, it is their function to declare the special act invalid.

The Michigan constitution of 1908 introduces another and a very effective check upon special legislation, by providing that "No local or special act shall take effect until approved by a majority of the electors voting thereon in the district to be affected." The same plan was adopted by the Illinois constitutional amendment of 1904, permitting special legislation for Chicago. North Carolina, in 1835, required public notice for a certain number of days before the passage of a special act. A similar provision has been introduced in several other state constitutions, but this requirement in a number of cases has been construed in such a manner as not to limit legislative power, and has therefore proven ineffective.

Among the limitations upon special legislation there may now ordinarily be found one upon the incorporation of cities by special act; and in some cases where special legislation as to this matter is permitted, it is hedged about by nine states. The enactment of general laws special acts relating to the organization of cities and towns may be enacted by a vote of two-thirds of all members elected to each house of the legislature, or, as in Michigan, where there must be a popular approval of such special acts in the community directly affected. Legislative interference with municipal affairs is also to a large extent avoided by constitutional provisions for municipal home rule. Such provisions have now been adopted by nine states. The enactment of general laws for the incorporation of cities and villages is a policy begun in the first half of the nineteenth century, without constitutional protection, but detailed restraint upon legislative action has been necessary in order to obtain anything like a general adoption of this policy.

See Bills of Rights; Constitution Making in the United States; Constitution of the United States, Prohibitions in; Contract, Freedom of; Courts and Unconstitutional Legislation; Due Process of Law; Religious Liberty; State Legislature.

References: J. Schouler: *Constitutional Studies* (1904), 29–69, 248–266; F. J. Stimson, *Law of the Federal and State Constitutions of the U. S.* (1908); C. C. Binney: *Restrictions upon Local and Special Legislation in State Constitutions* (1894); J. Q. Dealey, *Our State Constitutions* (1907); F. J. Goodnow, *Municipal Home Rule* (1897), 56–98; J. M. Gray, *Limitations of the Taxing Power* (1906); T. M. Cooley, *Constitutional Limitations* (7th ed., 1903); A. Scott, "Holmes *vs.* Walton, the New Jersey Precedent" in *Am. Hist. Review*, IV (1898).

Walter F. Dodd.

CONSTRUCTION AND INTERPRETATION.

Definition.—A distinction between "interpretation" and "construction" is suggested by their etymology. Interpretation is the act of ascertaining the true sense of any form of words, and it is usually applied only to the ascertainment of the meaning of written instruments such as contracts, deeds, wills, statutes and constitutions. It takes into account, however, the entire instrument in all its parts and, in the light of such circumstances as are properly to be considered, ascertains the meaning of the entire instrument with reference to any particular subject matter. Construction, in a strict sense, is the drawing of conclusions from the instrument respecting subject matter not expressly covered by the language but as to which the instrument is relied upon to evidence the intent. In the act of interpretation the letter of the instrument controls, while construction involves its general spirit and intent. By general usage the two terms are used interchangeably, construction being, however, the more comprehensive term. The principles recognized in interpretation and construction are included within the general subject of hermeneutics, the art or science of interpretation.

General Rules.—All parts of the instrument, or if two or more instruments have been employed to express the intention, then all such instruments, are to be construed together for the purpose of giving a meaning, if possible, to each part, for one part will not be allowed to nullify another if by construing the parts together a meaning or intention may be derived from the whole. If two or more parts are found to be necessarily contradictory, then the purpose of construction is to ascertain which of the two or more provisions expresses the final intention. Liberal construction is the rule, the purpose being to ascertain the entire meaning and intent as applied to any subject matter to which the instrument relates; but strict or literal construction may be required by the circumstances under which the instru-

ment was formulated or by rules of public policy.

Of Statutes.—Public acts of a general nature are necessarily additions only to the existing body of statutory and unwritten law and in their construction existing law is to be taken into account not only as to definitions of terms used but also in determining the purpose of the act. In the absence of an explicit repealing clause the new act will be construed as in addition to the existing law unless it is necessarily in conflict with it. All portions of the act will be taken into account in construing any part of it and each part will, if practicable, be given such construction as to avoid necessary conflict with other parts and so as not to render other parts meaningless. The object to be constantly borne in mind in construction or interpretation is to ascertain the legislative intent and for that purpose the title and the preamble, although not strictly portions of the act, may be considered. Contemporaneous history and the general tenor of the discussion in the legislative bodies enacting a statute may also be taken into consideration but individual expressions of members, as such, relating to the intent, whether antecedent, contemporaneous or subsequent, are not to be considered. Liberal construction is the general rule but penal statutes, that is, statutes providing for a punishment, and, to some extent, private statutes, are strictly construed.

Of Constitutions.—Some general rules of interpretation and construction are observed as to constitutions, suggested by their nature and purpose. A state constitution is a charter of government providing generally for the creation, organization and exercise of powers by different departments and also for the election and qualification of the officers or members of such departments. It is not regarded as a grant of power save in a very general sense, it being assumed that the government provided for has all the powers of government distributed among the departments as the constitution prescribes. While any one department has only the powers in general conferred upon it by virtue of its creation or specifically granted to it, yet the state government as a whole has all governmental powers not inconsistent with the exercise by the Federal Government of the powers conferred upon it by the Federal Constitution and not specifically denied to it in the state constitution or the Federal Constitution. With reference to a state constitution, therefore, there is usually no occasion to discuss the distinction between express and implied powers. On the other hand, the Federal Constitution is a grant of powers in derogation of the general powers of government which would otherwise have remained with the state governments; therefore it is said that the Federal Government is one of enumerated powers. In emphasis of this proposition based fundamentally on the nature of the Federal Constitution it is provided therein that powers not delegated to the United States by that instrument nor prohibited by it to the states are reserved to the states respectively or to the people (Amendment X). But the provisions of the Federal Constitution are nevertheless to be liberally, not strictly, construed for the purpose of carrying out the general purposes expressed in that instrument and the Federal Government has not only the powers expressly granted to it, but also such implied powers as are reasonably necessary for the purpose of carrying out the powers expressly granted (*see* IMPLIED POWERS). The argument for a strict construction has necessarily been based on the theory that the grant of powers to the Federal Government was by the states, while the theory now generally accepted is that the grant was by the people from whom state governments also derived their powers; with the result that there is no ground in either case for insisting upon a strict construction.

See CONSTITUTIONS, STATE; IMPLIED POWERS; LAW, CONSTITUTIONAL, AMERICAN; NECESSARY AND PROPER; RESULTING POWERS; UNITED STATES AS A FEDERAL STATE.

References: F. Lieber, *Hermeneutics, or Principles of Interpretation and Construction* (Hammond's ed., 1880); J. G. Sutherland, *Statutory Construction* (2d ed., 1904); H. C. Black, *Construction and Interpretation of Laws* (1896), *Am. Constitutional Law* (3d ed., 1910), 75–81; J. Story, *Commentaries on the Constitution* (5th ed., 1891), §§ 397–456, 1857–1909; W. W. Willoughby, *Constitutional Law* (1910), 12–52; T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 70–123, 241. Against strict construction, see Gibbons *vs.* Ogden (1824), 9 *Wheaton* 1.

EMLIN McCLAIN.

CONSTRUCTION AND REPAIR, BUREAU OF. The Bureau of Construction and Repair is one of the bureaus of the United States Navy Department (*see*). It is charged with the preparation of plans for the construction of new vessels and the renovation of old vessels. It supervises work on government account in private ship-building yards and conducts all building or rebuilding operations in navy yards and naval stations. See NAVAL VESSELS; NAVY YARDS. **References:** Secretary of the Navy, *Annual Report;* J. A. Fairlie, *National Administration of the U. S.* (1905), 159.

A. N. H.

CONSULAR BUREAU. The Consular Bureau is one of the bureaus of the Department of State (*see* STATE, DEPARTMENT OF). It is charged with the conduct of correspondence between the Secretary of State and the consuls-general, vice consuls-general, consuls, and consular agents of the United States in foreign countries. See CONSULAR REPORTS; CONSULAR

SERVICE. References: Secretary of State, *Annual Reports*; C. H. Van Tyne and W. G. Leland, *Guide to the Archives* (2d ed., 1907), 84. A. N. H.

CONSULAR REGULATIONS OF THE UNITED STATES. Secretary Livingston in 1833, and Secretary Buchanan in 1845, called the attention of Congress to the importance of regulations of a strictly definite nature for consular officers. But, up to 1856, consular officers assumed their duties with only such information regarding them, as were contained in the very general and rather indefinite laws enacted by Congress, regarding the consular service, and in occasional circular letters of instruction issued by the Department of State.

The consular regulations are a body of rules prescribed by the President, for the information and government of consular officers, under the provisions of the Act of August 18, 1856, (R. S. 1752). By this law the President

> is authorized to prescribe regulations and make and issue such orders and instructions . . . . in relation to the duties of all . . . . consular officers, the transaction of their business, the rendering of accounts and returns, the payment of compensation, the safe keeping of the archives and public property in the hands of all such officers, the communication of information, and the procurement and transmission of the products of the arts, sciences, manufactures, agriculture, and commerce, . . . as he may think conducive to the public interest.

Upon the passage of this act, President Pierce promulgated a body of consular regulations, November 10, 1856 which, with various additions and amendments, still remain in force. They are so drawn as to afford not only all necessary information as to the rights, privileges and powers of consular officers as recognized by the law of nations, by treaties, and by long established usage or custom in particular places, but also to serve as a guide to the proper performance of their highly important and often complicated functions.

The regulations may be grouped under two general heads. Those which relate to the duties of consuls; (1) with regard to the rights in person and in property of the individual American citizen abroad; (2) with regard to their public duties, as guardians of the public health, as protectors against the admission of undesirable immigrants and against frauds on legitimate trade and the public revenue, and, as promoters of trade and commerce.

The foremost duty of consular officers is the protection, preservation and promotion of the rights and interests of their fellow-citizens in foreign lands.

Special instructions are given as to intervening in behalf of fellow citizens, who become involved in difficulties with foreign governments or subjects. In certain semi-civilized countries consuls are invested with judicial authority over American citizens in both civil and criminal cases.

In addition, the instructions since 1880 have laid much emphasis upon the promotion of the foreign trade and commerce of the United States, by means of reports upon industrial and commercial interests furnished by consuls to, and published by, the Government.

Further, certain important duties are imposed upon consuls by the tariff laws with the object of protecting American commercial interests engaged in foreign trade from the evils of undervaluation of imported merchandise, and the Government against loss of revenue resulting therefrom.

Various revisions of the regulations have been made since 1856, *viz.:* in 1870, 1881, 1888, and 1896. The rewriting of the regulations of 1896 has been authorized by Congress and this work is now in progress.

See ALIENS; COMMERCIAL POLICY AND RELATIONS OF THE UNITED STATES; CONSULAR SERVICE; EXCHANGE, PRINCIPLES OF; FREE TRADE AND PROTECTION; INTERNATIONAL UNIONS; MONOPOLIES, THEORY OF; NAVIGATION OF INTERNATIONAL RIVERS; PROTECTION OF CITIZENS ABROAD; RECIPROCITY POLICY; TREATIES OF THE UNITED STATES; diplomatic relations with foreign states by name.

References: C. L. Jones, *Consular Service of the U. S., Its History and Activities* (1906), ch. i–iv; F. Van Dyne, *Our Foreign Service* (1909), ch. iii, 217–284.

CHARLES RAY DEAN.

CONSULAR REPORTS. For almost a century of our national existence the commercial public were indifferent to the fact that consuls might be used effectively as agencies for the extension of their trade abroad. Consuls were, therefore, chiefly engaged in the protection of American citizens and their rights abroad. The information regarding commerce which they were instructed to gather was largely of a statistical nature, and for official use.

Since the middle of the last century, Congress has authorized formal publications of four kinds:

(1) In 1853 consuls were for the first time instructed to gather information of a definitely commercial character—facts relating to scientific discoveries, progress in the arts and agricultural development. In 1856 Congress authorized the annual publication of these reports, thereafter known as the *Commercial Relations.*

(2) In the efforts which were made after the Civil War to revive the commerce of the country, these reports were found to be very useful, but more frequent publication was necessary to make them effective. Accordingly, in 1880, the Government began the publication of a monthly series of *Consular Reports,* which have been increasingly appreciated by the public. Special reports on questions connected with commerce were often made, separate publication of which began in 1890. Re-

ports known as *Declared Exports*, being a summary of the commerce declared for the United States in foreign ports are also published annually. The instructions to consuls regarding reports were largely extended and amplified in 1888. Among the subjects to be reported upon are: (1) Conditions of foreign commerce and internal trade, manufactures, mechanical industries and agriculture; (2) facilities for direct or indirect communication; (3) development or decline of commercial and manufacturing centers and cognate subjects; (4) changes in economic conditions of producing communities; (5) changes in tariff legislation; (6) legislation actual, or proposed, of interest to farmers, merchants, manufacturers, inventors and others; (7) undertakings and enterprises of moment. (3) The sudden expansion of our foreign commerce resulting from the Spanish-American War of 1898, brought about a decided departure in our commercial publications, placing the United States far in advance of all other countries. A series of daily consular reports was inaugurated in 1898, making them immediately available to trade. They are distributed free to manufacturers, boards of trade, etc. The reports, at first issued by the Department of State, were issued from 1905 to 1913 by the Department of Commerce and Labor, until 1912 through the Bureau of Manufactures, superseded in that year by the Bureau of Foreign and Domestic Commerce; they continue to be issued by the latter bureau, now a bureau of the Department of Commerce. Besides keeping our manufacturers informed daily regarding the wants of the whole world, they lead to direct business relations, thus saving the expense of middlemen. The value of the daily consular reports is attested by numerous letters from manufacturers, and by the fact that the demands for them have grown enormously, increasing from 4,900 in 1905 to 20,000 in 1913.

(4) Based upon advance information sent by consuls, confidential bulletins relating to large projects and public works are issued to interested parties.

The reflex effect of the consular reports has been seen in its stimulating influence upon the consuls, in increased activity and work, and the Department of State for several years has made the character and number of the reports furnished by the consuls important elements in determining a man's worthiness for advancement in the service.

See COMMERCE, INTERNATIONAL; CONSULAR REGULATIONS; CONSULAR SERVICE.

References: *Consular Regulations* (1896); C. L. Jones, *Consular Service of the U. S.* (1905); Chief of the Bureau of Manufactures, *Annual Reports*; J. B. Osborne in *Atlantic Monthly*, XCIX, Feb., 1907, 139; *Commercial Relations, Introduction* (1854); *Consular Reports, Introduction* (1880); *Senate Reports*, 40 Cong., 2 Sess., No. 154 (1868).

CHARLES RAY DEAN.

CONSULAR SERVICE OF THE UNITED STATES

History.—The office of consul, as first conceived, was chiefly judicial in character, and arose from the need of some tribunal or judge to settle commercial disputes arising in foreign countries, especially in the East. They were at first chosen by commercial organizations from their own membership. But gradually the governments of the nations assumed the right to appoint such officers as their own agents, and, with the extension of the jurisdiction of courts of law, the judicial functions of consuls ceased save in non-Christian countries. They then became, for the most part, commercial agents of their governments, with duties which have steadily increased in diversity.

The right of consular representation was first recognized in America in the treaty of amity and commerce entered into by the united colonies with France, in accordance with which the Continental Congress in 1780 appointed William Palfrey of Massachusetts consul to France. The appointment of consuls by the President, by and with the advice and consent of the Senate, was provided for in the Constitution (Art. II, Sec. ii, ¶ 2), but three years elapsed before Congress enacted any law for the establishment and regulation of a consular service.

Organization in the United States.—In the meantime, Thomas Jefferson, first Secretary of State, by reason of his experience abroad as diplomatic agent, was keenly alive to the advantage of commercial representation; six consuls and ten vice-consuls were appointed, to serve without compensation, but to be permitted to engage in trade. Their duties were defined in a circular letter of instruction issued August 26, 1790. Through his influence with Congress Jefferson secured the Act of 1792, which authorized consuls to receive the protests or declarations of American captains, crews, passengers and merchants; to act as conservators of the personal property of American citizens dying within their consular districts, and leaving there no legal representatives; to take measures to save stranded American vessels and their cargoes, and to look after distressed American seamen. The act required bonds to be given by consuls and vice-consuls, and they were authorized to receive fees for certain specified services.

Jefferson adopted the rule that none but American citizens should represent the United States as consuls, though a foreign subject might be appointed vice-consul. As no salaries attached to these offices, merchants were usually appointed, who not infrequently used their offices for their own personal benefit. These abuses, together with the growth of trade and the development of commercial intercourse of the United States with foreign countries, made a revision of the law and a more efficient service imperative.

Legislation 1855–1864.—Numerous efforts were made in Congress to agree upon a law. Finally, on March 1, 1855, an act was passed (revised and reënected on August 18, 1856). leading toward a well organized and comprehensive consular system. Two classes of consuls were provided for; the first class to receive salaries ranging from $1,500 to $7,500 a year, in lieu of all commissions and fees for services; the second class to receive salaries ranging from $500 to $1,000, and to be allowed to engage in business. All officers not enumerated in these two classes were to be compensated as before, by fees collected for official services. The duties of consuls were extended and more clearly defined, and the President was authorized to prescribe regulations for the guidance of consuls, which should have the force of law.

In 1864 Congress provided for a corps of consular clerks, thirteen in number, to hold office during good behavior, and not to be removed except for cause stated in writing and submitted to Congress. Unfortunately the uncertainty of tenure in the higher offices made consular clerks unwiling to accept promotion.

Proposed Reforms, 1895–1905.—Various unsuccessful efforts to secure more stringent requirements as to appointment were made during the period from 1864 to 1895, especially by an order of 1873. In 1895 President Cleveland issued an executive order providing that vacancies in consulates with compensations of over $1,000, and not more than $2,500, should be filled: (1) by transfer from the Department of State of some one qualified for consular work; (2) by appointment of a person who had previously served in the Department of State; or (3) by the appointment of persons furnishing evidence of character, after passing an examination as to their qualifications, having been first designated therefor by the President. Beneficial results followed the application of the order, but further reforms were necessary and were taken up and pressed upon the Government by commercial organizations and business men before 1898.

In the summer of 1905, Elihu Root, a constructive statesman of exceptional force and executive ability, became Secretary of State. He saw at once the importance and advantage of a trained and well-organized consular corps, and turned his energies and masterful mind to the task of reorganizing the service. Heartily supported by President Roosevelt, and with the coöperation of Senator Lodge, of Massachusetts, he succeeded in procuring the enactment of the act of April 5, 1906.

Reorganization Act, 1906.—Its chief features were: (1) the creation of five inspectors of consulates; (2) the prohibition of the appointment of foreigners to clerkship in consulates with salaries of one thousand dollars or more; (3) the prohibition of consuls from engaging in business or practicing law, or being interested in the fees of any lawyer; (4) requiring the performance of notarial services, which had theretofore been optional; (5) requiring that all fees should be paid into the treasury; (6) stipulating that the salary provided by law should be the sole compensation of an officer; (7) directing the use of adhesive fee stamps as a check against failure to account.

Since Congress failed to include some other very important features of the law as originally introduced, the President, under authority conferred upon him by statute (R. S. 1,753), upon the advice of Secretary Root, issued an Executive Order June 27, 1906, prescribing a system of appointments and promotions intended to insure greater efficiency and permanency of tenure. The order provides substantially as follows:

(1) A board of examiners shall pass upon candidates for admission to the service when such candidates have been specially designated by the President therefor.

(2) Candidates shall be between the ages of twenty-one and fifty, American citizens, morally, physically and mentally qualified.

(3) Examinations shall be written and oral, and candidates must attain an average of at least 80 per cent in both in order to pass.

(4) The subjects embraced in the written examination are; (a) one modern language other than English; (b) the natural, industrial, and commercial resources and commerce of the United States, with special reference to the possibilities of increasing and extending the foreign trade of the United States; (c) political economy; (d) the elements of international, commercial and maritime law; (e) American history, government and institutions; (f) political and commercial geography; (g) arithmetic; (h) the history, since 1850, of Europe, Latin America, and the Far East, with particular attention to political, commercial and economic tendencies.

To become eligible for appointment as consul in a country in which the United States exercises extraterritorial jurisdiction, a supplementary examination in the common law, the rules of evidence and the trial of civil and criminal cases is required. The oral examination is designed to determine the canditate's character, business ability, alertness, general contemporary information, and natural fitness for the service, including moral, mental and

physical qualifications, character, address and general education and good command of the English language.

(5) Successful candidates shall be appointed only to the eighth and ninth grades of consuls, or, as vice or deputy consuls, consular assistants, or student interpreters.

(6) Certain persons serving in the Department of State may be eligible for appointment to consulates above the eighth grade.

(7) Vacancies in offices above the eighth grade shall be filled by promotion from the lower grades.

(8) Vacancies in consular grades eight and nine shall be filled by promotion of subordinate consular officers or student interpreters who have been appointed upon examination, or by new appointments of successful candidates upon examination.

(9) Promotions shall be made on the ground of efficiency solely.

(10) Appointments shall be made without regard to political affiliations, and as far as possible, so made as to secure proportional representation of all the states and territories in the service.

Present Organization.—This Order has demonstrated its effectiveness and the desirability of its enactment into positive law. Since the reorganization of the service in 1906 (the act of 1906 was further amended by the act of Congress, May 11, 1908). Seventeen examinations of candidates for appointment have been held; 492 men have been examined, 211 of them were successful, 163 have been appointed, 89 as consuls, and the others as consular assistants and student interpreters. Of the 89 appointed consuls, 44 men were from the South and 45 from the North.

The service as now organized consists of five consuls general at large, or inspectors of consulates, with a salary of $5,000 a year and travelling expenses; 57 consuls general, divided into seven classes, with salaries ranging from $3,000 to $12,000 a year; 241 consuls, divided into nine classes, with salaries ranging from $2,000 to $8,000 a year, six places combining diplomatic and consular functions, a total of 304 principal officers. In addition there are 357 vice and deputy consular officers; 237 consular agents; 9 marshals of consular courts; 19 interpreters; 27 consular assistants; 22 student interpreters, making a total of 975 officers in the service.

Duties of Consular Officers.—The duties of consular officers are as follows:

Consuls general at large are advisory and inspecting officers visiting, periodically, the various consular offices in their several districts, and reporting in writing and verbally to the Department of State.

Consuls general are charged with the ordinary duties of a consul, but have supervisory powers over the consulates and consular agencies within their consular districts, if any there be, such supervision, however, not extending to accounts.

Consular Officers are expected to endeavor to maintain and promote all the rightful interests of American citizens, and to protect them in all privileges provided for by treaty or conceded by usage; to visa and, when so authorized, to issue passports; when permitted by treaty, law, or usage, to take charge of and settle the personal estates of Americans who may die abroad without legal or other representatives, and remit the proceeds to the treasury in case they are not called for by a legal representative within one year; to ship, discharge, and, under certain conditions, maintain and send American seamen to the United States; to settle disputes between masters and seamen of American vessels; to investigate charges of mutiny or insubordination on the high seas and send mutineers to the United States for trial; to render assistance in the case of wrecked or stranded American vessels, and, in the absence of the master or other qualified person, take charge of the wrecks and cargoes if permitted to do so by the laws of the country; to receive the papers of American vessels arriving at foreign ports and deliver them after the discharge of the obligations of the vessels toward the members of their crews, and upon the production of clearances from the proper foreign port officials; to certify to the correctness of the valuation of merchandise exported to the United States where the shipment amounts to more than $100; to act as official witnesses to marriages of American citizens abroad; to aid in the enforcement of the immigration laws, and to certify to the correctness of the certificates issued by Chinese and other officials to Chinese persons coming to the United States; to protect the health of our seaports by reporting weekly the sanitary and health conditions of the ports at which they reside, and by issuing to vessels clearing for the United States bills of health describing the condition of the ports, the vessels, crews, passengers, and cargoes; and to take depositions and perform other acts which notaries public in the United States are authorized or required to perform. A duty of prime importance is the promotion of American commerce by reporting available opportunities for the introduction of our products, aiding in the establishment of relations between American and foreign commercial houses, and lending assistance wherever it is practicable to the marketing of American merchandise in foreign countries.

In addition to the foregoing duties, consular officers in China, Turkey, Siam, Korea, Maskat, Morocco, and a few other so-called un-Christian countries, are invested with judicial powers over American citizens in those countries. These powers are usually defined by treaty, but generally include the trial of civil cases to which Americans are parties, and in

some instances extend to the trial of criminal cases.

A vice-consular officer takes the place and exercises all the functions or powers of a consul-general or consul when the latter is temporarily absent or relieved from duty. He receives no salary except in the absence of the consul-general or consul, when he receives one-half of that officer's salary (in the absence of an agreement to the contrary). For the period during which the consul-general or consul may be absent beyond sixty days and the time necessary to make the journey to and from the United States, the vice-consular officer receives the entire salary of the office. It is usual to give a vice-consul regular employment as a clerk in the consular office, in which case he receives regular compensation at the rate of from $300 to $1,500 a year, according to the importance of the office and the nature of the work to be performed. For such appointments no examination is required, but to become eligible for promotion to the grade of consul a vice-consular officer must successfully pass the prescribed entrance examination.

A deputy consular officer is a subordinate of a consul-general or consul, under whose supervision he exercises consular functions, usually of a routine character. He never assumes the responsible charge of the office, that being the duty of the vice-consul. His compensation is limited to that which he may receive for performing duties as clerk, and varies from $300 to $1,500 a year, according to the importance of the post. For such appointments no examination is required, but to become eligible for promotion to the grade of consul a deputy consular officer must successfully pass the prescribed entrance examination.

A consular agent is an officer subordinate to a consul-general or consul, exercising similar powers at ports or places different from those at which the consulate-general or consulate is situated. He acts under the direction of his principal, and one half of the fees collected by him constitute his compensation, which may not exceed $1,000 in any one year.

There are thirty *consular assistants*, who are appointed by the President and hold office during good behavior. They may be assigned, from time to time, to such consular offices and with such duties as the Secretary of State may direct. When so assigned they are subordinate to the principal officer at the post, and perform such clerical or other duties of the office as he may designate. They receive a salary of $1,000 a year for the first three years, and thereafter $200 a year additional each succeeding year until a maximum of $1,800 is reached. Candidates for the office of consular assistant must be over eighteen years of age.

Provision is made for ten *student interpreters* at the legation to China, six at the embassy to Japan, and ten at the embassy to Turkey. These officers receive annual salaries of $1,000 and allowances for tuition of $125 each, and are required to study the language of the country with a view of supplying interpreters to the American diplomatic and consular offices in China, Japan, and Turkey. Upon receiving an appointment each student interpreter is required to sign an agreement to continue in the service as interpreter to the legations and consulates so long as his services may be required within a period of five years. After acquiring the language of the country, they may be assigned to duty in diplomatic or consular offices, and are eligible to promotion to the office of interpreter and to that of consul of class 8 or 9.

See Consular Regulations; Consular Reports; Diplomatic Service; Letters Rogatory; Protection to American Citizens Abroad.

References: C. L. Jones, *Consular Service of the U. S., Its History and Activities* (1906), chs. i–iv; F. Van Dyne, *Our Foreign Service* (1909), ch. iii., 217–284; E. Schuyler, *Am. Diplomacy* (1886), ch. ii; J. B. Moore, *Digest of Int. Law* (1906), ch. vi; G. Hunt, *Department of State of the United States; Its History and Functions* (1893); J. E. Conner, *Uncle Sam Abroad* (1900), 43–120; W. J. Carin in *Am. Int. Law Journal*, IV (Oct., 1907), 891–913; *Consular Regulations* (1896); E. Livingston, *Report in Relation to the Consular Establishment of the U. S.* (1833); De B. R. Keim in Consular Service of the United States of America, *Reports* (1873); D. B. Warden, *On the Origin, Nature, Progress and Influence of Consular Establishments* (1813); W. E. Curtis, *U. S. and Foreign Powers* (1899); J. W. Foster, *Practice of Diplomacy* (1906), ch. xi; bibliography in A. B. Hart, *Manual* (1908), § 226.

Charles Ray Dean.

CONTAGIOUS DISEASES. The Government is limited in its control of contagious diseases by the Constitution. Its main activities consist of:

(1) Scientific studies into the causes and modes of transmission of the communicable diseases. Under this category the government maintains laboratories in Washington and branch laboratories in various parts of its continental and insular domain, such, for example, as the hygienic laboratory of the Public Health Service, various laboratories in the Department of Agriculture, the leprosy investigation station at Honolulu, the plague laboratory in San Francisco, the sundry scientific commissions to investigate typhoid fever, malaria, yellow fever, pellagra, and other diseases that menace the public health.

(2) Education, which is of fundamental importance in the control of contagious diseases. In this regard the Government corresponds to a university at large. It distributes informa-

tion through pamphlets, bulletins, reports, lectures, demonstrations, exhibits and other means. The Federal Government is developing into a large correspondence school in which questions are given careful consideration and answer. This is one of the more useful and instructive governmental methods which has been encouraged and developed and which deserves further support.

(3) Interstate quarantine. Federal authority is now limited in its efforts to prevent the spread of contagious diseases from one state or territory to another to comparatively few diseases; *viz.*, cholera (cholerine), yellow fever, smallpox, typhus fever, leprosy, and plague. Section III of the act of February 15, 1893, relates, however, to "contagious and infectious diseases." This act, however, has not yet been enforced by regulations to include typhoid fever, tuberculosis, and the so-called minor communicable diseases. It is evident that this is one of the important phases in which government activity can accomplish especial good, for, while the Government will ever have limited power within the state it will always have practically unlimited authority so far as interstate conditions are concerned. Contagious diseases will never be adequately controlled by the local authorities without the coöperation of the Government. It is evident that if one state should rid itself of typhoid fever it would soon become re-infected from the neighboring states. Interstate sanitation is one of the burning questions needing vigorous action and can only be solved through extending the powers of the central health authorities.

(4) Maritime quarantine is now under the jurisdiction of the Federal Government except at the ports of Boston and New York. At the port of New York the quarantine is maintained under state control and at Boston under municipal authority. According to the act of July 1, 1902, all local quarantines are subject to federal surveillance and are required to maintain minimal standards. The object of maritime quarantine is to exclude from our country exotic contagious diseases. The contagious diseases against which the Government quarantines are: plague, yellow fever, cholera, typhus fever, smallpox and leprosy. Other contagious diseases such as mumps, whooping-cough, measles, typhoid fever, etc., arriving at a port come under the restrictions of the local sanitary authorities.

See Health, Public, Regulation of; Hospitals; Quarantine.

References: Public Health and Marine Hospital Service, *Annual Reports.*

M. J. Rosenau.

CONTEMPT. A willful disregard or disobedience of a public authority, especially of a court or of a legislative body. H. M. B.

CONTINENTAL CONGRESS

The First Congress.—The term Continental Congress usually embraces both the first and the second congresses. The first was called on the suggestion of the Virginia burgesses, who, after being dissolved by Governor Dunmore, adjourned to the Raleigh tavern, and there adopted a resolution urging that an annual congress of all the colonies be called "to deliberate on those general measures which the united interests of America may from time to time require." Rhode Island responded first (June 15, 1774), and two days later Massachusetts also elected delegates to meet those from other colonies in Philadelphia on September 1. During the next two months ten other colonies took similar action. The delegates from two colonies were chosen by the legally elected legislatures, while the Massachusetts delegates were chosen by the lower house duly elected for the ordinary purposes of law making. In six colonies special conventions or provincial congresses chose the delegates. Georgia was not represented at all. Of these delegations four were instructed to procure the harmony and union of the empire, to restore mutual confidence, or to establish the union with Great Britain. Three were instructed to repair the breach made in American rights, and to preserve American liberty. Two were to seek a repeal of the obnoxious acts or to determine on prudent and lawful measures of redress. Three were simply to attend Congress or "to consult to advance the good of the colonies." North Carolina, alone, bound her inhabitants in honor to obey the acts of the Congress to which she was sending delegates. This Congress was not thought of as a law-making body, but was regarded as a convention of emissaries from distinct communities who wished to take counsel among themselves concerning their common relations to England. Each colony had one vote. Fifty-five members from twelve colonies attended. Peyton Randolph was chosen president and Charles Thompson, secretary. No journal of its debates was kept, but the scraps of information from letters and diaries reveal seven weeks of discordant debate, and final action that was by no means unanimous. Samuel Adams (*see*) directed the policy of resistance, while Joseph Galloway was the leader of the party of concession. Galloway offered a wise and worthy plan for a proposed union between Great Britain and her colonies. This was

defeated by a single vote. Adams's superior political craft prevailed. The essential acts of the Congress are the Declaration of Rights and Grievances, and the Association (*see*). The delegates did not go beyond their instructions, and the restoration of harmony with Great Britain was the prevalent desire. Before adjourning, provision was made for calling a new congress for further consultation in the following May.

The Second Congress.—When the time came to elect the new Congress, the radicals in every colony acted with zeal, and the loyalists were so terrorized that they took no part. Three of the delegations were chosen by the regular legislatures, three by the lower houses of the legislatures, and seven by provincial congresses or conventions of town or county delegates. In the election of the latter, a very small proportion of the regular electors took part in some cases. As before, each delegation came instructed. Three were merely to "attend," "meet," "report," or "represent." Two were to "join," "consult," and "advise," while six were "to concert and agree" or "determine upon." Georgia's delegates were "To do, transact, join and concurr with the several Delegates." Maryland and North Carolina, from the first, and Georgia and New Jersey later, bound the state and people to abide by the resolutions of Congress. The powers of most of the delegations were given for the purpose of "restoring harmony" or "accommodating the unhappy differences" with Great Britain, to obtain a "redress of American grievances," a "reëstablishment of American rights" or a "repeal of offensive acts." Three were "to preserve and defend our rights and liberties," and one was "to advance the best Good of the Colonies." Three provinces did not specify a definite purpose.

Powers.—Considering the uncertain authority of the Congress, the breadth and sweep of the power assumed will always amaze the readers of its history. Without jurisdiction anywhere, without power to govern, without money, laws, or means of executing them, the Congress was soon engaged in directing and unifying the action of thirteen states hitherto very jealous of each other. In common with the states themselves, Congress began to exercise sovereign powers, taking measures for general defence, raising an army and navy, establishing a post-office, raising money, emitting bills of credit, and authorizing captures and the condemnation of prizes. Moreover, Congress did these things while a majority of its members was vowing allegiance to the King of Great Britain and denying any desire to separate from the empire. Later, when all the bonds were broken between America and England, Congress continued to exercise these powers under the stress of war which always concentrates a maximum of authority in any central governing agency. In fact, before the Articles of Confederation (*see*) were drawn up, and approved by the states, Congress exercised, because of the exigencies of the moment, much more power than it did after its powers were regulated by the terms of confederation. Even when Congress was strongest, however, it was as John Adams expressed it, "not a legislative assembly, nor a representative assembly, but only a diplomatic assembly." As Randolph said of Congress, "They have, therefore, no will of their own, they are a mere diplomatic body and are always obsequious to the views of the states." On committees which were to consider important measures, it was thought necessary to have one member from each state. The delegates from any one state, no matter how many there might be, cast but one collective vote. If these delegates went beyond the limits set by their instructions, the state legislatures which had appointed them did not hesitate to rebuke them. The resolution of independence was not voted upon until most of the states had authorized their delegates to favor it, and after Congress adopted it seven states took special action, adopting it for themselves individually.

Work.—The work of Congress was difficult and varied. It acted first of all as a mouthpiece of the patriot party in any and all of the colonies. It disposed of sundry applications, on behalf of individuals, not by assuming jurisdiction but by recommending local authorities to act. It considered requests for advice and aid to particular colonies, and then recommended action. Though it raised an army and administered a continental revenue, it was obliged to ask the states to support the army and to redeem the financial pledges. Congress acted as an organ of communication between the colonies collectively and foreign individuals and nations; but particular states did not hesitate to send their own representatives for like purposes. All these functions Congress performed through an elaborate system of committees—sometimes a hundred in number—because the democratic spirit of the times would not allow one man power. John Adams was a member of ninety committees, and Richard Henry Lee, on numerous committees, "panted for retirement from the most distressing pressure of business I ever had conception of." Adams wrote, "The whole Congress is taken up, almost, in different committees, from seven to ten in the morning. From ten to four or sometimes five we are in Congress and from six to ten in committees again . . . . the whole Congress is thus employed." Everything from the plan of a treaty to the plan of a seal was made in committee. A committee made rules and regulations for the army, one collected lead, another salt, others planned post-routes, or arranged for printing bills of credit. Thus all of the endless tasks were made the subject of debate, and efficiency was sacrificed to democracy.

The work of the president, and of the secretary of Congress, placed amid all these committees and obliged to refer to each the work and correspondence that belonged to them, was appalling. It was made more so by the lack of office facilities. "It is a rule of Congress," wrote Henry Laurens, "to commit letters to the consideration of particular boards, and these being dispersed in different parts of the town and governed by rules of their own for meeting, it is not always in the power of the president to answer with that dispatch which may seem necessary." Moreover, members hardly learned their committee duties before they might be recalled to some state office, or sent on some foreign mission, so that brief and fitful terms of service still further increased the inefficiency of Congress. Sectional interests and provincial narrowness still further retarded business and prevented decisive action. Lafayette declared that there were parties in Congress who hated one another as much as they hated the common enemy. The French plenipotentiary, Gerard, made much use of the sectional factions in Congress, playing one against the other to attain his ends.

See Articles of Confederation; Confederation, 1781–89; Congresses and Conventions in the Revolution; Court of Appeal in Cases of Capture; State Governments During the Revolution.

References: Bibliographies are to be found in P. L. Ford, "Official Publications of the Continental Congress" in Boston Public Library, *Bulletin*, VIII, IX, X (1887–1892); C. H. Van Tyne, *Am. Revolution* (1905), 343–4, "Sovereignty in the American Revolution" in *Am. Hist. Review*, XII (1906–7), No. 3, 529–545. Secondary accounts: H. Friedenwald, *The Declaration of Independence* (1904); A. W. Small, "The Beginnings of Am. Nationality" in *Johns Hopkins University Studies*, VIII (1890), Nos. I, II; J. F. Jameson, "The Origin of the Standing Committee System" in Am. Hist. Assoc., *Annual Report*, 1893, 391–399. Sources: W. C. Ford, Ed., *Journals of Continental Congress* (beginning 1904); W. G. Sims, Ed., *Army Correspondence of J. Laurens* (1867); "Samuel Ward's Diary" in *Magazine of Am. Hist.*, I (1877), 505; "Diary of Richard Smith" in *Am. Hist. Review*, I (1895–6), 288–310, 493–516.

C. H. Van Tyne.

CONTINENTAL CURRENCY. See Currency, Continental.

CONTINENTAL SYSTEM, 1803–1815. Napoleon, after the treaty of Campo Formio, (Oct. 17, 1797) adopted a high protective policy, which he soon extended (1802) to lands conquered in Italy, and to Holland and Switzerland, thereby considerably decreasing English commerce.

In 1803 he began to extend his system beyond the countries immediately under his control. Determined to induce Prussia to enforce his system he provoked the British Government to declare a blockade from Elbe to Brest by Orders in Council of May, 1806. Following his military victories, which furnished opportunity to make the French system continental, he replied with the Berlin Decree (*see*) November 21, 1806, declaring a blockade of the British Isles.

Replying to new English orders (January and November, 1807) and other measures, he issued the Milan decrees (*see*) of November 23 and December 26; and soon secured adhesion of most of the remaining European powers to his continental system. By his Bayonne decree of April 17, 1808, he ordered the seizure of American vessels entering French, Italian or the Hanse ports.

The peaceful Jefferson, hoping to avoid war and to compel the repeal of the decrees, recommended an embargo act (passed December 22, 1807) which greatly damaged American economic interests. A year later (March 1, 1809) against Jefferson's private remonstance it was replaced by non-intercourse legislation which as reënacted June 28, 1809, continued in force until 1812. Under an act of May 1, 1810, President Madison, erroneously assuming from a statement of the French Government that the decrees would cease to operate on November 1, relieved French commerce from the restrictions of nonintercourse, which were simultaneously revived against England.

At one time Napoleon contemplated an arrangement with the United States for the repeal of the Milan decree; but influenced by later events he determined to continue his policy until the British orders were either withdrawn or forcibly resisted by the United States. By the retroactive Ramboullet decree (March 23, 1810) he ordered the seizure and sale of American vessels in the ports of all countries occupied by France—resulting in American losses estimated at $10,000,000. The secret Trianon decree (August 5, 1810) and the St. Cloud and Fontainebleau decrees directed the burning of all English goods in territory of the French system, and utterly shut out neutral ships from their harbors.

The continental system failed in its purpose and proved fatal to Napoleon in the end. Efforts to enforce it were abandoned soon after Alexander of Russia, tired of the burdens resulting from the Peace of Tilsit (July 7, 1807), refused to prohibit trade with the Americans, and finally opened his ports. The decrees were finally annulled by the French in 1812 followed by the repeal of the British Orders, but the dangers resulting therefrom became the basis for part of the famous French spoliation claims (*see*) finally settled by a commission provided by convention of 1831.

See France, Diplomatic Relations with; Milan Decree; Neutral Trade; Orders in Council.

References: Henry Adams, *United States* 1889), III, chs. xv-xviii; F. M. Anderson, *Const. Docs. Illustrating the Hist. of France* (1904), 384–397; C. M. Andrews, *Hist. Develop. of Europe* (1896), I, 49–62; J. B. McMaster, *Hist. of the U. S.* (1896), III, 215–278; S. H. Gay, *Madison* (1898), chs. xv, xvii; Alex. Johnston, *Am. Pol. Hist.* (1905), I, 288–308; A. T. Mahan, *Sea Power and the French Revolution* (1892), 269–357; J. B. Moore, *Int. Arbitrations* (1898), V, 4447–4486; J. T. Morse, *Jefferson* (1898), ch. xvii; J. H. Rose, *Napoleon* (1907), II, 197–207; J. Schouler, *Hist. of the U. S.* (1894), II, 156, 172–175, 197–199, 335–339; Edward Smith, *England and the U. S.* (1900), ch. xiv; T. D. Woolsey, *Int. Law* (1897), 352–355; *Polit. Sci. Quart.*, XIII (1898), 213–231. J. M. Callahan.

CONTINUATION SCHOOLS. See Schools, Continuation.

CONTINUING APPROPRIATIONS. This refers to appropriations which from their nature must extend over several years, as, for example, for rivers and harbors and public buildings. See Appropriations, American System of. D. R. D.

CONTINUOUS VOYAGES. Rule of 1756.—In the eighteenth century it was a common practice among states to limit the carrying trade between the mother country and dependencies to domestic vessels. In the war of 1756 France opened to Dutch vessels the colonial trade formerly monopolized by French vessels. Great Britain announced that such vessels were practically in the service of France and that when engaged in trade closed to them in time of peace Dutch vessels would be liable to the same treatment as French vessels similarly engaged. The British prize courts enforced this declaration which is known as "the rule of war of 1756."

The armed neutrality (*see*) of 1780 held that if trade previously closed was open to all states in time of war, there would not be the same imputation of violation of neutrality as when in 1756 the trade was opened to a single state. Treaties were made both before and after 1756 providing for the opening to one another in time of war of ports closed in time of peace. To avoid difficulties which might arise under the rule of 1756, France, in 1779, removed all restriction on trade with her West Indian colonies. Lord Stowell in case of the *Immanuel* in 1799 stated the British point of view at that time:

> The general rule is, that the neutral has a right to carry on, in time of war, his accustomed trade to the utmost extent of which that accustomed trade is capable. Very different is the case of a trade which the neutral has never possessed, which he holds by no title of use and habit in times of peace, and which, in fact, can obtain in war only by no other title than by success of one belligerent against the other, and at the expense of that very belligerent under whose success he sets up his title. (2 Robinson *Admiralty Reports* 197).

The United States at this time claimed the right to trade except with blockaded ports and in contraband.

Offences on Previous Voyages.—It was generally maintained that a vessel which had completed its voyage was no longer liable for an offense committed on a previous voyage, involving carriage of contraband, violation of blockade, or offense against the laws of war regulating trade. The question then arose as to what constituted the completion of a voyage. This point was considered at length in the case of the *William* in 1806 (5 Robinson *Admiralty Reports* 385). It was maintained that this could not be determined by the direction of the voyage, port of call, shifting of ship's cargo from ship to shore, expense of transfer, or other act to give impression of completion. "If the voyage from the place of lading be not really ended, it matters not by what acts the party may have evinced his desire of making it appear to have ended." The voyage was therefore considered as continuous till the goods reached the ultimate destination regardless of the interposition of an intermediate destination of vessel or goods.

Destination.—Before the American Civil War the general rule was that the destination of the vessel determined the destination of the goods. During the Civil War the doctrine came to be applied to either cargo or vessel. The doctrine of continuous voyage previously applied to vessels carrying on forbidden trade was also extended at this time to blockade. In the case of the *Springbok* sailing ostensibly from London to Nassau, the Supreme Court of the United States maintaining that the cargo was originally shipped with intent to violate blockade, and to be reshipped into a faster vessel at Nassau, said: The voyage from London to the blockaded port, was, as to the cargo, both in law and in intent of the parties, one voyage; and that the liability to condemnation, if captured during any part of the voyage, attached to the cargo from the time of sailing. (1 *Wallace* 1). This position met much criticism in Europe.

Declaration of London.—The American doctrine would be considerably restricted, though perhaps not to the disadvantage of belligerent or neutral, if the Declaration of London of 1909 were ratified. This provides:

> *Article* 30. Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct, or entails shipment or transport over land.

See Milan Decree; Neutral Trade.

References: J. B. Moore, *Digest of Int. Law* (1906), VII, 383–391, 697; G. G. Wilson, *Int. Law* (1910), 459–468; W. E. Hall, *Int. Law* (1909), 667 *et seq.*, 714; H. W. Halleck, *Int.*

Law (1908), II, 248, 339; bibliography in A. B. Hart, *Manual* (1908), § 189.

George G. Wilson.

CONTRABAND. In the time of war certain articles of neutral commerce are classified as contraband. "The classification of goods as contraband or not contraband has much perplexed text-writers and jurists. A strictly accurate and satisfactory classifieation is perhaps impracticable; but that which is best supported by American and English decisions may be said to divide all merchandise into three classes: articles manufactured and primarily and ordinarily used for military purposes in time of war; articles which may be and are used for purposes of war or peace, according to circumstances; articles exclusively used for peaceful purposes.

"Merchandise of the first class, destined to a belligerent country or places occupied by the army or navy of a belligerent, is always contraband; merchandise of the second class is contraband only when actually destined to the military or naval use of a belligerent; while merchandise of the third class is not contraband at all, though liable to seizure and condemnation for violation of blockade or siege." (5 *Wallace* 28).

Articles Included.—The above opinion from Chief Justice Chase in the case of the *Peterhoff* in 1866 states in a general way the principles now accepted in regard to contraband. Just what articles should be included in each category has been a matter of much difference of opinion. A proposition before the Hague Conference in 1907 included under the heading of absolute contraband the list subsequently approved by the International Naval Conference at London in 1908–09. The list corresponds closely with that from time to time published by belligerents though some would not include "saddle and draught pack animals suitable for use in war." The text is as follows:

Article 22. The ofllowing articles and materials are, without notice, regarded as contraband, under the name of absolute contraband:
(1) Arms of all kinds, including arms for sporting purposes, and their component distinctive parts
(2) Projectiles, charges, and cartridges of all kinds, and their component distinctive parts.
(3) Powder and explosives specially adapted for use in war.
(4) Gun carriages, caissons, limbers, military wagons, field forges, and their component distinctive parts.
(5) Clothing and equipment of a distinctively military character.
(6) All kinds of harness of a distinctively military character.
(7) Saddle, draught, and pack animals suitable for use in war.
(8) Articles of camp equipment and their component distinctive parts.
(9) Armor plates.
(10) Warships and boats and their component parts specially distinctive as only suitable for use in a vessel of war.
(11) Implements and apparatus made exclusively for the manufacture of munitions of war, for the manufacture or repair of arms or of military material, for use on land or sea.

Conditional Contraband.—Under conditional contraband are placed articles which may or may not be of use for war and the liability to capture is determined by the destination. Food and fuel are the most important items. When destined for the enemy's forces or for military use it is evident that they will be liable to capture; but at the same time such articles serve the noncombatant population, and when destined for their use should be exempt. Many other articles are in the same category.

The Declaration of London of 1909, if ratified, will provide for an absolute free list which cannot be regarded as contraband under any circumstances. This includes many raw materials such as cotton, wool, and other articles which could be used only incidentally in war, such as clocks, watches, furniture, etc.

Penalties.—The generally recognized penalty for the carriage of eontraband is (in the case of capture) confiscation of the goods. The penalty has, however, varied at different times. The offense of carriage of contraband is regarded as deposited with the cargo. The vessel suffers the loss due to the delay consequent upon capture and adjudication of the contraband; and if the vessel in whole or in part, or the non-contraband cargo, belongs to the owner of the contraband, to that extent the vessel and non-contraband cargo may be forfeited. Some treaties provide that contraband may be delivered up to the belligerent by the master of the merchant vessel and the merchant vessel may then go free.

See Maritime War; Neutral Trade; Neutrality, Principles of.

References: G. G. Wilson, *Int. Law* (1910), 418–458; J. B. Moore, *Digest of Int. Law* (1906), VII, 656–697; J. B. Scott, *Cases on Int. Law* (1902), 760–796; L. Oppenheim, *Int. Law* (1909), II, 636 *et seq.*; T. J. Lawrenee, *Int. Law* (1910), 697 *et seq.*

George G. Wilson.

CONTRABAND, NEGROES. At the beginning of the Civil War negroes came across the Federal lines into the camp at Fortress Monroe, commanded by General B. F. Butler. When the masters came over and demanded their return under the principles of the fugitive slave law (*see*) Butler declined to return them on the ground that they were "contraband of war." This whimsical application of a principle of maritime war to a peculiar kind of property on land caught the public ear; and to the end of the war "contraband" was a common term for a negro, especially a negro who was floating about, off his original plantation. See Butler, Benjamin F.; Contraband; Fugitive Slaves. **References:** Nicolay and Hay, *Abraham Lincoln* (1909), IV, 386–396); B. F. Butler, *Autobiography and Personal Reminiscences* ["Butler's Book"] (1892).

A. B. H.

CONTRACT AS A BASIS OF GOVERNMENT. See Political Theories of Modern Continental Publicists; Social Compact Theory.

CONTRACT, FREEDOM OF. The right to make contracts with reference to personal services or property is one of the rights necessarily preserved in all constitutional guaranties of liberty and property. It is, therefore, protected against impairment by the usual clauses in state bills of rights prohibiting the impairment or deprivation of life, liberty or property without due process of law, and as against the exercise of federal power it is protected under that clause in the Federal Constitution (Amendment V) and now, by the Fourteenth Amendment, the guaranty of the Federal Constitution is extended to cover action by the states (*see* Fourteenth Amendment). Like other personal and property rights it is, however, subject to limitations. (1) The validity of contracts is determined by the general rules of law relating to the competency of parties to make them and the subject matter as to which they may be made. Thus, lunatics, infants, and, to some extent, married women are regarded as incapable of contracting and their obligations, although voluntarily entered into, are voidable or void. As to subject matter, contracts against public policy or in violation of valid legislative restrictions or prohibitions are invalid. The obligations of such contracts are not protected by the constitutional provisions. (2) As the exercise of all private rights is subject to police regulation, restrictions on freedom to contract imposed in the valid exercise of the police power do not impair the constitutional guaranties. The question here is only as to the extent of the police power (*see*). For the protection of the public health, the conditions under which labor in certain forms of employment shall be conducted, and the hours of labor of certain classes of persons such as infants or women may be regulated by statute and any contract in violation of such statutory prohibitions will be invalid, for to this extent the freedom of the individual to contract is properly restricted. (3) The duty to serve the public assumed by persons who engage in public employments or devote their property to public use may be regulated by statutory provisions restricting their power to limit their obligations in this respect and such statutory restrictions on the power to contract are not unconstitutional (*see* Granger Cases; Munn *vs.* Illinois).

The general principle, therefore, is that competent persons have the right to the exercise of freedom of contract with reference to lawful subject matter and any legislation depriving them of or restricting them in this right to contract or depriving them of legal remedies for enforcement is invalid.

See Business, Government Restrictions of; Child Labor; Contract, Impairment of; Labor, Hours of; Labor, Relation of the State to; Prices and Charges; Wages, Regulation of.

References: T. M. Cooley, *Treatise on the Law of Torts* (3d ed., 1906), ch. ix; E. Freund, *Police Power* (1904), §§ 498–503; Holden *vs.* Hardy (1898), 169 *U. S.* 366; Adair *vs.* United States (1908), 208 *U. S.* 161; McLean *vs.* Arkansas (1909), 211 *U. S.* 539; Lochner *vs.* New York (1905), 198 *U. S.* 45; Atlantic C. L. R. Co. *vs.* Riverside Mills (1910), 219 *U. S.* 186; F. N. Judson, "Liberty of Contract under the Police Power" in Am. Bar Ass., *Reports* (1891), XIV, 231.

Emlin McClain.

CONTRACT, IMPAIRMENT OF

Constitutional Provisions.—As the result of a suggestion in the constitutional convention (*see* Federal Convention) that states should not be allowed by retroactive legislation to interfere with private contracts, the provision that "no state shall . . . pass any . . . law impairing the obligation of contracts" was included among the limitations in the Federal Constitution upon the exercise of state power (Art. I, Sec. x, ¶ 1). In the *Federalist* (*see*) this provision is referred to as calculated to eliminate hostility among the states (No. VII, by Hamilton) and prevent legislation which would be "contrary to the first principles of the social compact and to every principle of sound legislation" (No. XLIV, by Madison). In many of the earlier state constitutions and in perhaps all of those recently adopted is found a similar limitation. No such provision is found in the Federal Constitution as to legislation by Congress, a motion in the convention to extend the provision to Congress not being supported. Nor is any such restriction on federal power included in the first ten amendments adopted soon after the Constitution went into effect, in which various limitations were imposed in the nature of a bill of rights. While it has been suggested in some cases that legislation of this character would be so obnoxious to the first principles of free government that it would be in the very nature of things invalid, nevertheless, in the exercise of other powers conferred upon Congress the objection that contract obligations were thereby impaired has been overruled on the express ground that as to action by Congress no such limitation is to

be found. National bankrupt laws and the legal tender acts have been sustained as against such objection (*see* LEGAL TENDER CASES). With this narrow historical basis for interpretation there has been built up a large body of judicial decisions as to what does and what does not constitute on the part of the states an impairment of contract obligations within the provisions of the Federal Constitution.

Contract Obligations.—By the constitutional provision a line is drawn between contractual obligations and those which are not contractual; with the result that retrospective legislation involving impairment of rights under preëxisting law is invalid as to the former while it may be valid as to the latter. In determining what obligations recognized by law are contractual the ordinary legal rules for determining the validity of contracts are applicable. Mere public rights and privileges, such as the elective franchise or the right to hold an office (*see*) (it is otherwise as to the right of compensation already accrued for official service) are not contractual and may be affected by subsequent legislation. Marriage and the inchoate rights of property existing in either party by virtue of marriage are subject to retrospective legislation. The legal test is whether, in consequence of contractual relations, obligations of contract have become vested, the term vested rights being used both as to contract obligations and rights of property to indicate those rights which may not be constitutionally impaired (*see* RETROSPECTIVE LEGISLATION; VESTED RIGHTS, PROTECTION OF).

Contract obligations include those arising from implied as well as those arising from express contract, limiting the word implied to indicate real as distinct from constructive contracts; for under the broad extension of actions on contract in the nature of assumpsit, remedies have been allowed for breach of legal obligations as though they were contractual when in fact no element of contract is involved, and it is not permissible, therefore, to determine the nature of an obligation as contractual or otherwise by the test of whether a so-called contractual action may be maintained for its breach. Thus a judgment is said to be a contract whether rendered for breach of obligation in contract or in tort (*see*); but a judgment rendered for damages in tort is not a contract which the legislature is prohibited from impairing, for tort remedies unless they are essential to the preservation of property may be affected by retrospective legislation even though they have already accrued.

As to contracts proper, the rights arising under them are protected not only while the contract remains executory, that is, still unperformed on one side or the other but also if it has been fully executed. Thus, an executed agreement to convey property is immune from legislative impairment (*see* FLETCHER *vs.* PECK). Rights which have become vested under the provisions of an executed contract are usually property rights and are now protected by the provision in the Fourteenth Amendment (*see*) as to due process of law; (*see* DUE PROCESS OF LAW) but at the time the question was considered by the Supreme Court of the United States there was as yet no provision in the Federal Constitution against state action impairing vested property rights and the restriction as to contract obligations was therefore resorted to. One who has become a party to contractual relations has no vested right to defeat the obligation of the contract on purely technical grounds and the legislature may validate contracts (such as conveyances by married women) which, without such curative legislation, would have been unenforceable.

Contracts by the State.—The constitutional provision applies not only to private contracts but also to contracts entered into by the state or under the authority of the state; with the result that a state may not by legislation impair the obligation of its own contracts. On the other hand, the general power to legislate on any particular subject matter can not be contracted away, for it is not competent for one legislature in matters within the scope of the general legislative power to bind the hands of a succeeding legislature. Any apparent conflicts between these two general rules must be solved by determining first, whether the attempt to grant a right or privilege was within the scope of legislative power, for if not then the grant is invalid; and second, whether a person claiming to rely on such legislative grant or privilege had a right to assume that it was irrepealable as to him and has so far availed himself of the claimed right or privilege as to insist that its repeal would deprive him of a vested right. The grant of a right or privilege by the state relied upon will be strictly construed in favor of the power of subsequent legislation, and, to be sustained, it must clearly appear that the intention of the legislature was to make it irrepealable (*see* CHARLES RIVER BRIDGE *vs.* WARREN BRIDGE). In general, privileges and exemptions offered by statute are construed as continuing only at the will of the legislature and therefore subject to subsequent revocation. This principle covers ordinary cases of general legislation, including statutes providing exemptions from taxation or other particular public burdens, or granting prospective bounties and other like gratuitous privileges.

But when a privilege has been specifically conferred by statute in favor of holders of bank notes issued under authority of the state or holders of bonds of the state, that they shall be receivable in payment of public taxes, the privilege cannot be taken away from such holders by subsequent legislation modi-

fying or repealing the statute granting such privilege. While such a statute might be repealed so as to prevent the issue of further notes or bonds carrying with them such privileges, the holders of those already issued while the statute is in force have acquired vested rights. A state may not be sued on its obligations by private individuals (*see* ELEVENTH AMENDMENT; STATES AS PARTIES TO SUITS) but it may confer rights, available otherwise than by suit against it, which it cannot destroy.

Charter Contracts.—Charters granted to private corporations, whether organized for purposes of profit or for charitable, educational, or benevolent purposes, are contracts, the benefits of which cannot be withdrawn or impaired by subsequent legislation (*see* DARTMOUTH COLLEGE CASE), unless the right to alter, amend, or repeal has been reserved, either by provision in the charter itself, or in the general law in accordance with which the corporate privilege is granted, or in the state constitution (*see* CORPORATION CHARTERS). In most of the states, however, there are constitutional or statutory provisions which deprive corporate charters, granted while such provisions are in force, of the protection against subsequent legislation to which, as contractual obligations, they would otherwise be entitled. And the grant to foreign corporations of the right on certain conditions to carry on business in the state does not confer irrevocable privileges; therefore the conditions may be modified or added to by subsequent legislation. The charters of public corporations do not have the characteristics of a contract but are in the nature of legislation and they may be modified or repealed at the legislative will so far as no individual interests have been vested under them (*see* CORPORATION, PUBLIC), but if a municipal corporation has exercised the power of issuing bonds, granting franchises, or conveying property it cannot be destroyed or its acts invalidated by legislation in such sense as to render invalid the acts which it has already done.

What Constitutes an Impairment.—In general, subsequent remedial legislation, which changes the general law relating to procedure, does not constitute an impairment of the obligation of contracts already made, and the contracting parties must pursue their remedies in accordance with the law existing at the time a remedy is sought. But statutes that deprive a contracting party of any substantial relief for breach of the contract by the other party, do impair the obligations of the contract and are to that extent prohibited. Thus the legislature may change the period of limitation within which actions on contracts may be brought; but such changes are invalid as to existing contracts if they deprive the party to such contract of a reasonable time within which to bring action for the enforcement of his rights under it. Likewise, debtors' exemption laws granting or increasing exemptions of property as against the claims of existing contract creditors are invalid as to such creditors. For the same reason a state insolvency law releasing insolvent debtors from contract obligations already incurred are invalid (*see* BANKRUPTCY).

But the constitutional prohibition is directed towards legislative action, that is, laws enacted under the power to legislate. It does not extend to judicial action—such, for instance, as a change in the rules announced in decisions of court—so as to render invalid new rules of decision, even when applied to existing contract rights, although the party to the contract may have relied upon existing rules of decision when such contracts were made. Contracting parties are bound to know that the judicial power extends in any particular case, to the interpretation of the contract and the determination of the rights conferred by it, whenever such questions arise for final decision. While the decision of a court with reference to the rights of a party to a particular contract is binding on all the parties to the adjudication as *res judicata*, the decisions of courts in like cases are not thus binding. The doctrine of *stare decisis* (*see*) in accordance with which courts of last resort regard themselves, in general, bound to follow the principles announced in previous cases, does not rest on constitutional obligation. Although the Supreme Court of the United States will not interfere on direct appeal with the decision of a state court on the ground that such decision in itself impairs the obligation of a contract made in reliance on former decisions which are thereby overruled, the federal courts in the exercise of their original jurisdiction do not feel bound to follow the latest decisions in a state in the interpretation of contracts which were valid when made under the rule of prior decisions in that state. In such cases the question is not as to whether state legislation impairs the obligation of a contract, but as to whether it should receive such interpretation under a new rule of decision as to invalidate acts which were valid under the interpretation given to the state statutes by the courts of the state at the time the contract was made.

Powers of Sovereignty not Impaired.—As above indicated, one legislature cannot limit the sovereign powers of succeeding legislatures. It may create vested rights but such rights, like all other rights existing by law, are subject to the exercise of general legislative power. Thus a vested right to hold property, which has been taken under the power of eminent domain for a public use, may be condemned in accordance with proper legislative provisions for another public use on the payment of damages resulting from its appropriation or impairment. Again, while specific exemptions

from taxation may be granted in consideration of some presumed public benefit, and will be considered as constituting a contract, the general power of taxation is not abrogated by the granting of property, charters, or franchises. In such cases the grantee does not have a vested right to the continuance of the same methods and rates of taxation as existed by law when the property or privilege was acquired. Likewise the general police power of the state may be constitutionally exercised even as to vested contract rights. For example, a corporation charted to manufacture intoxicating liquors or conduct a lottery cannot complain that its charter contract is violated if the state, in the exercise of its legitimate police power prohibits the manufacture of intoxicating liquors or the carrying on of lotteries. The privilege of conducting such forms of business may be denied to corporations already chartered as well as to individuals already engaged therein. On the other hand, exclusive privileges legitimately granted within the proper scope of the police power may involve vested rights which cannot subsequently be taken away save in accordance with constitutional methods. As to public callings and the use of property devoted to public purposes (*see* PUBLIC USE) the police power to regulate the business and fix reasonable rates is not limited by the granting of charters authorizing corporations to engage in such forms of business, unless the charters themselves contain specific limitations on the power of subsequent legislation in this respect.

See CORPORATION CHARTERS; CORPORATION, PUBLIC; DARTMOUTH COLLEGE CASE; FRANCHISES, CORPORATION; POLICE POWER.

References: J. Elliot's *Debates* (1830; new ed., 1876), V, 485, 488, 545, 546; *The Federalist*, Nos. 7, 44, J. Story, *Commentaries on the Constitution* (1833; 4th ed. by T. M. Cooley, 1873, 5th ed. by M. M. Bigelow, 1891), II, ch. xxxiv; T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 383–417; W. W. Willoughby, *Constitutional Law* (1910), II, 891–926.

EMLIN MCCLAIN.

CONTRACT LABOR LAW. The contract law of February 26, 1885, was designed to prevent the coming into this country of workmen who, prior to leaving their native lands, have entered into agreements to work for persons in this country. The act of March 3, 1903, extended these prohibitions to all forms of implied contracts.

The enactment of contract labor laws has been due chiefly to the efforts of organized laborers, whose interest is based upon the fact that contract laborers have sometimes been used as strike-breakers. Contract laborers, again, usually agree to receive a wage based upon European standards, which is usually much below that current in the United States.

The report of the Immigration Commission has established the fact that American employers now rarely attempt to circumvent the contract labor law. The mass of the southern European immigrants of the present day, however, are in much the same plight as the contract laborers of old. Because of their ignorance of the language and customs, they fall under the control of labor contractors of their own race, who often make large fortunes through furnishing their labor to American employers. Our laws do not yet afford any protection to the immigrant against exploitation by these labor contractors (known popularly as padrones).

See EMPLOYERS' ASSOCIATIONS; IMMIGRATION; LABOR, PROTECTION TO.

References: U. S. Immigration Commission, *Preliminary Recommendations* (1910), 20–21, *Immigration Legislation* (1912).

J. R. COMMONS.

CONTRACT SYSTEM OF PUBLIC WORK

Rival Methods.—Two methods of construction are common for public works. In the direct (often called the day's work) method the actual construction work is carried on wholly by the governmental corporation, which not only directs the work but furnishes the materials and labor. In the contract system an agreement is entered into between the corporation and a contractor, under which the latter undertakes to supply all the materials and perform all the labor, the corporation agreeing to pay him for his services, when the work is completed, either a lump sum price for the whole, or upon the basis of unit prices for the various items named in the agreement. Among engineers and administrators a wide difference of opinion exists as to which method is best for the interests of the municipal corporation.

Day's Work System.—In favor of the direct method it may be argued; that the corporation should be able to do the work as cheaply as the contractor, and should, therefore, be able to save the profit that the contractor expects, and to which he is entitled; that since the corporation and its employees, have no interest in the outcome other than to secure the best results, the work is likely to be done in a better manner than by a contractor, with whom profit is the controlling incentive; and that the method offers greater freedom and latitude to change or modify plans and spec-

ifications as the necessity for or desirability of such changes may devolop during the progress of the work, without the danger of invalidating contracts or incurring "extra bills" by the contractor.

Contract System.—On the other hand, in addition to denying these claims, those holding the opposite view assert that municipal officials and employees are not usually competent, from training and experience, to handle the executive functions required, or if competent, they are burdened with other duties and have not time to give the executive department of the work the attention that it requires; and that it is difficult if not impossible, where the corporation is itself doing the work, to prevent the intrusion of politics and favoritism in the purchase of supplies or the employment of assistants and labor, to the detriment of the work.

Taking these considerations more in detail it may be said that it is seldom the case that a municipal or other governmental corporation can carry out any important public work at a cost as low or lower than can a competent contractor. It is a well attested fact that, as a rule, such corporations pay higher wages than private employers, and that the labor so employed is less efficient than the average. Often the governmental hours of labor per day are less than a contractor would exact, and holidays and time off is allowed and paid for in the one case where it would not be in the other. The application of civil service laws and regulations to corporation employees is often an obstacle in the way of securing the most efficient laborers or in getting rid summarily of those who are inefficient or undesirable, and, generally, in enforcing the rigid discipline that is a prime essential in conducting public work. Where the employee feels that his immediate superior cannot discharge him without the formality of a hearing by higher authorities he is likely to be less careful in his conduct. The feeling prevails among laborers that a municipal government is, or should be, an easy task-master and that it is quite allowable to shirk whenever opportunity offers. Municipal foremen or overseers do not feel that their positions are so dependent upon the good results they attain as when employed by contractors, and often they have "friends at court" who will stand by them in case of criticism. Furthermore, a contractor can (or does) usually purchase his plant and supplies more cheaply than the same articles would be supplied to the corporation. The contractor has usually had greater experience and is more skillful in accomplishing results economically than the average municipal officer. His ultimate motive is to do the work as cheaply as possible and thus make the greatest possible profit, and he will devote all his time, ability and energy to attain that end. On the other hand, the city official, however earnest and patriotic he may be, has other urgent duties that occupy much of his time; and his salary and therefore his personal pecuniary interests are not likely to be affected by the result. In brief, while there are numerous records of cases where work has been conducted directly by the corporation as cheaply as the contractors bid for the same work, it is undeniable that, as a rule, public work has been done at a lower cost by the contract method than has been commonly secured by the direct method.

Quality of Work.—The proposition often put forward that work is likely to be done in a better manner by the direct than by the contract method is very plausible but is often not sustained by the facts. With adequate plans, specifications and contracts, and efficient supervision and inspection, the contractor may be compelled to do his work properly. In the case of direct work it is usually assumed that employees can have no other motive than to secure the best results for the corporation, and that, therefore, careful independent inspection and supervision is not important. But in fact, the officials in charge are anxious to make the best possible financial showing and for that reason may not insist on strict compliance with the details of the specifications, which may not in their opinion affect the "good enough" quality of the work, while its omission may reduce the cost. Whatever the cause may be, many close observers will testify that, as a rule, the quality of work done by the direct method is not superior to that done by contract.

Facility of Making Changes.—The claim of greater flexibility in making changes, additions and omissions in the work, as developments during its progress may demand, and of avoiding the extra work and the exorbitant bills likely to be presented by the contractor therefor, is not valid, since necessary modifications to the contract and the manner in which they are to be made, can be provided in the original contract, and a stipulation that no extra work is to be done or pay therefor demanded by the contractor unless the price shall be previously agreed upon in writing, will effectively prevent difficulties of this character.

Effect of Politics.—It is often difficult to avoid the pernicious effect of politics and favoritism in conducting public works under the direct method, particularly under our municipal governments. Incidents are likely frequently to occur where the officer in direct charge will not feel justified in refusing the request or demand of his superior officials that certain persons shall be employed or retained, or that supplies shall be bought of certain dealers, however inadvisable it may be in his own judgment; nor can such an officer be held strictly responsible for results when he is thus interfered with by those to whom he feels it necessary to defer.

Balance of Advantage.—It seems justifiable to conclude that whereever practicable it is best to carry out public work by the contract rather than by the direct method. But many cases will occur where the conditions make it advisable that the direct method should be chosen. In such cases the work should be put in charge of a single competent man, who should be given adequate authority and be held strictly responsible for results. Briefly, he should take the place of the contractor in his relation to other officials, the work being supervised and inspected by the proper agents of the corporation with the same care and thoroughness as though it were being done by contract.

See BOSS AND BOSS SYSTEM IN PARTY ORGANIZATION; COST OF GOVERNMENT IN THE UNITED STATES; MUNICIPAL OWNERSHIP; PUBLIC WORKS, NATIONAL STATE AND MUNICIPAL; PURCHASE OF PUBLIC SUPPLIES AND PROPERTY.

References: Boston Finance Commission, *Report*, 1910, III; H. P. Eddy, "Relative Efficiency of the Day Labor and Contract Systems of Doing Municipal Work" in *Journal of the Associated Engineering Societies*, XLIV (1910), 24; S. Whinery, *Municipal Public Works* (1903), ch. iv, 51.

SAMUEL WHINERY.

CONTRACTING OUT OF LABOR LAWS. There are many instances in which the common law limits freedom of contract to the extent of forbidding persons from waiving law or statutes established in their interest or that of the state; for instance the familiar principle that a common carrier or innkeeper may not impose upon his customers a release of his liability as such; but the most general matter to which this has been applied is that of the labor law—employers' liability, and generally, statutes made in the interest of the laboring man. There are now statutes throughout half the states and constitutional prohibitions in some of the new states forbidding such contracting out even by express written contract between the employer and employee, as for example:

> It shall be unlawful for any person, company or corporation to require of its servants or employees as a condition of their employment, or otherwise, any contract or agreement whereby such person, company, or corporation shall be released or discharged from liability or responsibility, on account of personal injuries received by such servants or employees, while in service of such person, company, or corporation, by reason of the negligeuce of such person, company, or corporation, or the agents or employees thereof, and such contracts shall be absolutely null and void.

See LABOR CONTRACTS; LABOR, RELATION OF THE STATE TO; LIBERTY, CIVIL; SOLDIERS AND SAILORS, LEGAL STATUS OF; WAGES, REGULATION OF.

References: *Labor Laws of the United States;* U. S. Commissioner of Labor, *22nd Annual Report*, 1907; F. J. Stimson, *Handbook to the Labor Law of the U. S.* (1896), 165; *Federal and State Constitutions* (1908), 314, 333; U. S. Industrial Commission, *Reports on Labor Legislation*, V, XVII.

F. J. STIMSON.

CONTRIBUTORY NEGLIGENCE. The legal doctrine that a lack of care on the part of a workman vitiates a claim based on the lack of care of the employer. See EMPLOYERS' LIABILITY.

C. F. G.

CONTROVERSIES UNDER THE CONSTITUTION. The judicial power of the United States extends to cases arising under the Federal Constitution (Art. III, Sec. ii), and is to be broadly interpreted as covering all controversies involving the interpretation or application of the provisions of that Constitution. See COURTS, FEDERAL, JURISDICTION OF.

E. McC.

CONVENTION, CONSTITUTIONAL. See CONSTITUTIONAL CONVENTION.

CONVENTION, POLITICAL

Early Methods of Nomination.—A variety of meetings having political ends in view have been called conventions, but for the purpose of this article the term is restricted to party gatherings whose leading function is the nomination of candidates for office. The political convention is, like other portions of party machinery, a development, a growth out of the crude, irregular methods and conditions of early party history, modified and adapted as time passed, to meet the direct, practical necessities which arose. The often-quoted account by John Adams of the early caucus as known to him in Boston, doubtless well describes the beginnings of our political party organization. Writing in 1814 he said, "They have invented a balance to all balances in their caucuses. We have congressional caucuses, state caucuses, county caucuses, city caucuses, district caucuses, town caucuses, parish caucuses, and Sunday caucuses at church doors; and in these aristocratical caucuses *elections have been decided.*" Substitute in this passage "convention" for "caucus" and "national" for "congressional" and you have in outline the present convention system of party organization. When Adams wrote, two strong parties had, already, for twenty years, been contending for control of the government. Voters were mainly in sympathy with one or the other of these

parties, and were accustomed to confer with those of their own way of thinking on political subjects. Party clubs were formed and party caucuses met to agree upon candidates for local offices.

The system, enlarged and extended to meet the requirements of the growing state, was naturally cast in the mould of its complicated institutions. The local caucus appointed delegates to meet with delegates from other caucuses within the city, the county, or the district, to make nominations for the next larger area. These delegated bodies gradually superseded the earlier irregular mass meetings, and by the beginning of the nineteenth century the county convention seems to have become established in Pennsylvania, county conventions and congressional conventions in Massachusetts and in other states. The rise of the state convention was delayed many years by the difficulties attending communications throughout so large a district, its function being performed by the legislative caucus (*see* CAUCUS). The method was not fairly representative for the whole state, but its convenience led to its retention and hindered the development of the complete convention system. The check given to the growth of the dual party system by the practical disbanding of the Federalist party, about 1815, with the resulting party confusion which lasted for more than a decade, also contributed to this delay. The method of the legislative caucus was even carried over to the machinery for nominating national candidates and was used for more than a quarter of a century as the congressional caucus for choosing the party candidates for President and Vice-President. In the year 1831, however, the first national nominating convention was held in Baltimore by the Anti-Masonic party, and by the adoption of the convention by the two chief parties, in 1832, the capstone was placed upon the structure of the political convention.

The Hierarchy.—The convention system implies a regular ascending series of nominating bodies belonging to each party to place candidates for office before the voters. There is first the local primary, caucus, or primary convention, composed of those voters affiliated with the party within the ward, precinct or township. These voters agree upon nominations to the local offices and also choose delegates to the nominating convention of the county or district. All voters are supposed to possess equal rights at the caucus or primary convention; but under the corrupt manipulation of party machinery which has crept into American politics it has become customary in some of the states to restrict membership in the primary to selected friends of the party managers; or, a caucus is "packed" by those desiring to nominate a tool or agent for their own personal interest. The stream is thus polluted at its source (*see* CORRUPTION).

Delegates to a county convention nominate candidates to county offices and elect delegates to a district convention which nominates candidates for Congress, and sends delegates to the state convention. In some states town primaries send delegates to the district convention and also to the state convention. It is the function of the state convention to nominate candidates for the state offices and elect delegates-at-large to the national convention.

Party Committees.—For many years the series of conventions was merely a succession of informal public meetings of party members to confer upon party interests, to listen to addresses, to pass resolutions expressive of party principles or policies, and especially to place in nomination the party candidates. The organization of each such assembly consisted of chairman, secretary, treasurer and such other officers as were required. When the convention adjourned the organization ceased to exist. The next convention might be called by an informal, self-appointed committee or by the officers of the previous convention. In course of time caucuses and conventions of every grade adopted the plan of appointing permanent committees to act on their behalf during the interval between meetings. The first national committee was appointed by the Democratic convention of 1848; but the party committee (*see* COMMITTEES, PARTY) did not gain recognition as a distinct and authoritative factor in party government until after the Civil War. This plan of permanent oversight and careful guidance of the party forces has made for strength and effectiveness in the organization. The national committee, composed of one member from each state and territory, is designed to act as a subordinate agent, or minister of the convention with unceasing oversight and care of the general interests of the party throughout the country, and has no doubt added greatly to the power of the national convention. It has, however, come to wield a large part of the authority supposed to belong to the body which created it, often exercising a controlling influence and dictating the action and policy of the convention. Thus has arisen conflict between the committees and the popular ideal of the convention system.

Conventions in Action.—The nominating machinery is set in motion by the primary committee, which calls the primary or caucus, composed of party members. Since the ultimate object of the whole enormous, intricate party organism is the nomination and election of a President, and since the choice of delegates in even the smallest areas may ultimately affect the final result, the high political officials have not disdained to keep watch upon the conduct of even the local nominating bodies and, through their trusted subordinates, to influence the choice of members of the party committee and of the delegates from the primaries to the larger conventions.

The successive conventions within the state culminate in the state convention, which is the organ for formulating and giving expression to the party policy within the state. Its proceedings are conducted with great formality and are closely modeled after those of the national convention. Questions of party regularity (*see*) are decided by the state conventions with final appeal to the national convention. One striking difference between state and national conventions appears in the basis of membership. Representation in a state convention is based upon the party vote at a preceding election—of President or governor; while the national convention takes no account of the party strength in determining representation. The state convention is related to the national convention through its appointment of delegates-at-large to that body. In the Democratic party it may choose all the delegates and may also instruct them as to their course.

National Convention.—Previous to 1868 the national conventions of the two parties were composed of delegates equal in number to the whole number of congressmen in the two houses; but in that year the Republicans doubled the number of their delegates, and the Democrats did likewise in 1872. A national convention, therefore, now has a membership twice as large as that of the two Houses of Congress. Four delegates-at-large from each state correspond to the senators from that state, while each congressional district sends two delegates. The Democratic party leaves to the organization within the state the method of choosing delegates. They may all be selected by the state convention as a whole, or the delegates in the state convention from the several districts may choose for their own districts the delegates to the national convention; or, each district may choose its delegates at a district convention. The Republican convention of 1888 enacted a rule that its delegates from the districts should be chosen in the same manner as congressmen from those districts are nominated. This means that part of them shall be chosen at primary elections and part by district conventions. Both parties admit representatives from the territories, with some variations as to numbers and privilege of voting.

Time and place of meeting are determined by the national committee, which also performs many other duties. The committee selects the officers for the temporary organization and when the convention assembles the committee's chairman calls it to order. Ordinarily the convention accepts the temporary officers nominated by the committee; but not invariably. In 1884 the Republican convention rejected the nominee of the committee for temporary chairman, and in the Democratic convention of 1896, after a contest over the same position, the nominee of the committee was defeated. The temporary chairman calls the roll of states and the delegates from each state and territory name a member for each of the four chief convention committees, through whose coöperation the convention is permanently organized.

At the second session the report of the committee on credentials is first called for, that the composition of the convention may be determined; if necessary, however, the permanent organization may proceed without waiting for that report. A permanent chairman, one vice-president from each state and territory and other officials are elected. Sometimes the committee on credentials has much difficulty in deciding contests between delegates or delegations. Its report is usually accepted; but a convention has been known to substitute a minority report and sometimes contesting delegations have both been seated, each member having half a vote.

The committee on rules and order of business is also one of the important four. The first Democratic convention, that of 1832, adopted the rule that a two-thirds vote of all the members should be required for the nomination of President or Vice-President, and succeeding conventions have followed that rule. The other parties have always nominated by a simple majority, even the Democrats using that method in other than national conventions. Another noticeable difference prevails in the proceedings of the two parties in national convention. The Democrats have enacted what is known as the "unit rule." By that rule the convention permits a majority of the delegation from a state to cast the entire vote of the state, even against the protest of a minority. Attempts to introduce this rule into Republican conventions have failed, and the Republican convention secures to each delegate the right to vote as he pleases, even though the delegation may have been instructed by the state convention to vote as a unit. To the Democrats the state is the unit, while Republicans emphasize rather the rights of the individual.

The platform (*see*) presented by the committee on resolutions is, as a rule, accepted as drawn, though subject to amendment on motion of any delegate. The great business of the convention now follows. The roll of states is called, and from any state a candidate for nomination may be named in a formal speech by a member of the delegation. These candidates are generally few, though the number has reached fourteen. The balloting proceeds and may be completed in a few hours, or it may consume many days before the convention agrees upon a presidential candidate. When that has been done the real mission of the convention is accomplished, though much formal action remains to be carried through. Both parties complete the work of the convention by the election of a national committee.

Members of that committee, and especially its chairman, are often retained in office for several successive terms with growing efficiency and power.

The national convention has other functions than that of nomination. It is the only officially recognized organ for the expression of national party opinion. On state and local questions the minor conventions give authoritative form to party views within the state; but no one of our three theoretically distinct and coördinate departments of government at Washington, nor all of them together are qualified to give official utterance to disputed points of party policy. Under the cabinet system (*see*) of government the party leaders are so qualified. In the United States the national convention is the sole and supreme organ for determining and promulgating the party views of national policy.

Criticism.—Two main lines of criticism are directed against the party convention. One set of critics maintains that it is subject to control and manipulation in a manner to deceive the public and gain command of the government in order to prostitute its power to the interest of predatory wealth. Such objections hold rather against the usurpations of party committees than against the convention itself. Other critics see in the great convention only a noisy, frenzied mob, swayed by passion and subject to the changing whims of the unreasoning multitude. As a matter of fact the machine-ruled convention is, in its essential operations, moved and controlled by cold, calculating reason and acts after a deliberately planned course to a predetermined end. The convention not controlled by a party boss is an assembly of citizens met for a serious object and fulfilling its purpose as effectively as does any sort of political or religious meeting. The occupants of the galleries are, in fact, though not in form, a part of the convention. They represent the general public; they judge the speeches of officers and delegates on the spot and express approval or disapproval in the only available way, by making a noise; but such noise is far from mere unmeaning sound. The convention that nominated Lincoln in 1860 was noted for tumult. Excessive noise was extemporized by Lincoln's supporters when train-loads of "rooters" for Seward arrived; but the nomination was won not because of noise but because Horace Greeley and other influential Republicans believed Lincoln to be the safer and better candidate. Possibly the vociferous demonstration made by delegates and visitors from the Pacific coast, inspired by Blaine's attitude on Chinese immigration, was a determining factor in respect to the nomination of Blaine in 1884.

Political and Historical Significance.—Every national convention of the great parties furnishes a new base line in the party career and becomes a landmark in national political history. After a convention, the party, as an institution, stands for something new, different. The American thinks, feels and experiences politics in quadrennial periods. The conventions summarize political history for the four preceding years and mark out the course of action for the four to follow. The conventions of 1868 record the reorganization of the government on a peace basis. The two parties grappled with the problems of reconstruction, the payment of the war debt and the resumption of specie payments. Four years later, the Republicans being divided respecting reconstruction, the Democrats, to their own surprise and that of all others, accepted Horace Greeley, a lifelong enemy of their party, as their presidential candidate. In 1876 the Democrats won a congressional majority on a reform platform and, as is commonly believed, were deprived of the presidency through the exercise of an abuse of power.

The conventions of 1880 are significant as marking the end of politics dominated by distinctive war issues. With the counting in of Hayes, Republicans withdrew federal troops from the South, thus surrendering those states to the Democrats. Resumption of specie payments was an accomplished fact; Hayes's administration had been free from scandal, and the issues between the two parties had become tame. But within the Republican party important and bitter factional strife had arisen over the question of the powerful party committee *versus* the free and open caucus and convention—the machine financed by greedy and corrupt corporations *versus* the public. The demand for reform had become definite. Both party platforms in 1880 demanded reform of the civil service (*see*) but both were weakened by faction. The Republican party fought out and settled its contest in the memorable Chicago convention. Disaffection with committee rule was widespread. Competing delegations came from some of the states. A section of the New York delegation chosen at the state convention and instructed to cast a solid vote for Grant refused to obey and was upheld by the convention. The party for the first time presumed to legislate directly against the machine. The fight of the factions held public attention; Democrats sought, but failed, to win the election by advancing a military hero. The fierce passions of the campaign did not readily subside; they led to the assassination of Garfield, and four years later disaffected Republicans joined with the Democrats to elect Cleveland on a distinct and thorough-going reform and anti-machine-rule platform. The two parties were thus fulfilling their appropriate function as a check upon corruption, and the national conventions were vindicated as agents of publicity and organs of enlightened public opinion.

Next in importance, respecting party adjustment in national convention to the leading political questions of the day, stand the conventions of 1896. The resumption of specie payments gave rise to a hard-fought contest between supporters of the gold and the silver standards of value. Both parties were divided and their convention platforms indicated a compromising attitude in favor of bimetalism, or the double standard. After twenty years of discussion the Democratic convention showed that a majority of that party had reached definite conclusions in favor of the silver dollar. Members of their national committee, however, were still at variance, a majority favoring the gold standard, and a contest hence arose over the control of the temporary organization. The great majority of the convention was plainly in favor of the unlimited coinage of the silver dollar at the ratio of "sixteen to one" (*see* SILVER COINAGE CONTROVERSY). Chief interest lay in the platform rather than in the candidates, and little progress had been made before the convention met in selecting a candidate. Out of its own body a candidate came forth. William Jennings Bryan, delegate from Nebraska, captured by a telling speech for silver both the convention and the nomination. The Republican convention declared with equal clearness in favor of maintaining the gold standard. The campaign following was fought over one clearly defined issue of far-reaching influence, and there was much shifting of party alliance. The Democrats became the radicals and the conservatives flocked into the Republican party.

Radical Tendencies.—With the advent of Roosevelt's leadership another change appeared. The parties vied with each other in advocating radical reform policies. The Democratic convention of 1904 showed some prospect of regaining the party's conservative position. The conventions of 1908 showed the Radicals in full possession of the Democratic party, while the Republican Progressives were only partially dominant. The failure of the Republican National Convention of 1912 to nominate Theodore Roosevelt resulted in the establishment of the Progressive party, which called a national convention at Chicago, Auguest 5, and nominated Roosevelt for the presidency. The radical wing of the Democratic party was successful in the 1912 convention, and secured the nomination of Woodrow Wilson who was subsequently elected.

See CAMPAIGNS, POLITICAL; CANDIDATE; CAUCUS; COMMITTEE ON CREDENTIALS; COMMITTEES, PARTY; CREDENTIALS OF DELEGATES; NOMINATING SYSTEMS; NOMINATION OF THE PRESIDENT; PLATFORM; PRESIDENTIAL ELECTIONS; PRIMARY, DIRECT.

References: J. Bryce, *Am. Commonwealth* (4th ed., 1910), ch. lxix; M. Ostrogorski, *Democracy and the Party System* (1910), chs. i–viii, "Rise and Fall of the Nominating Caucus" in *Am. Hist. Rev.*, V (Jan., 1909), 253–283; T. H. McKee, *National Conventions and Platforms, 1789 to 1901* (1901); J. Macy, *Party Organization and Machinery* (2d ed., 1912), ch. vi. 40, 46, 88; J. A. Woodburn, *Pol. Parties and Party Problems* (1903), ch. xii; G. E. Howard, *Local Constitutional Hist.* (1889), 355; E. Stanwood, *Hist. Presidential Elections* (1884); C. A. Beard, *Am. Government and Politics* (1910), ch. ix; F. C. Meyer, *Nominating Systems* (1902); F. W. Dallinger, *Nominations for Elective Office* (1897); C. Becker, "The Unit Rule" in *Am. Hist. Review*, V (1899), 64–82; J. F. Rhodes, "The National Republican Conventions of 1880 and 1884" in *Scribner's*, L. (1911); H. J. Ford, *Rise and Growth of Am. Pol.* (1896), ch. xvi; J. G. Blaine, *Twenty Years of Congress* (1884), I, 99–304, 164–169, 517–530, II, 385–404, 520–531, 567–579, 659–670; J. F. Rhodes, *Hist. of U. S.* (1910), VI, 158–188; E. D. Fite, *Presidential Campaign of 1860* (1911), chs. v, vi; P. S. Reinsch, *Readings in Am. Federal Government* (1909), ch. xvi; C. L. Jones, *Readings on Parties and Elections* (1912), ch. iv; Official *Proceedings* of Democratic and Republican Conventions.

JESSE MACY.

CONVENTIONS OF THE CONSTITUTION. The conventions of the Constitution are those rules or practices which have become so generally recognized and so well established as to have substantially the force of rules and practices expressly sanctioned or required by the Constitution. Many of the rules of legislative procedure are of this class. The most striking instance of a "convention" in practice modifying a provision of the Constitution is the purely formal or ministerial character of the function performed by the presidential electoral college. The important part played by conventions in the English constitutional system is brilliantly discussed by A. V. Dicey in his work entitled *Law and Custom of the Constitution* (7th ed. 1908). See CONSTITUTION, LAW AND CUSTOM OF; CONSTITUTION OF THE UNITED STATES, GROWTH OF; CONSTITUTIONS, GROWTH OF; LAW, CONSTITUTIONAL AMERICAN.

W. W. W.

CONVICT IMMIGRANTS. Since the act of March 3, 1891, all immigrants who have been convicted in their native lands of serious offenses, not merely political, have been subject to deportation. This legislation was enacted to offset the efforts of European charitable organizations to enable ex-convicts to get a new start in life in the United States.

Convinced that many immigrant criminals still get into the United States, the Immigration Commission has recommended that all immigrants be required to show statements from foreign police officials, to the effect that they have never been convicted of serious crime. This recommendation is accompanied

by another; that all immigrants who commit crime within five years of their arrival be deported.

See Expulsion from the United States; Immigration; Penalties for Crime; Protection to American Citizens Abroad.

References: R. Mayo Smith, *Emigration and Immigration* (1890), ch. ix; United States Immigration Commission, *Report on Conclusions and Recommendations*, 1910, 19–20, *Immigration Legislation*, 1912, 43.

J. R. Commons.

CONVICT LABOR

Issue of Convict Labor.—The question of convict labor has been widely discussed in the United States for many years. Governors and legislators consider it from the standpoint of the general interests of the state Prison officers take it up with reference to its effect upon prison discipline and the health of the convicts. Manufacturers and the representatives of labor organizations view it with reference to its effect upon the labor market and the welfare of the working man. Penologists and philanthropists discuss it with reference to reformation and rehabilitation of the prisoner.

Notwithstanding great differences of opinion among these different representatives, they have all practically agreed upon two points: (1) the prisoner ought to work; (2) he ought to be employed upon some form of productive labor. Everyone agrees that idleness among prisoners is prejudicial to health, morals and discipline, and is an injustice to the community which must support the prisoners. The same line of argument supports the provision that the work should be productive. The prisoner who carries bricks from one part of the yard to another to-day and returns them tomorrow accomplishes no good for himself or for society.

Leaving this common ground, there is a wide diversity of opinion as to how prisoners can be so employed as to maintain themselves, so as to be trained for self support after their discharge, and to avoid unjust competition with free labor. The leading forms of labor in prisons are the following:

(1) **Lease System.**—The lease system, whereby the labor of the convict is sold to a contractor to be employed upon railroad construction, mining, farming, etc. The lessee pays an annual sum for the labor of the prisoner and formerly, in some states, became responsible for the food, clothing, guarding and medical treatment of the prisoner. In recent years the lease system has been modified so that the state is responsible for the guarding of the convict and usually for his clothing, etc. Under the lease system prisoners are usually worked outside the prison walls. Prisoners earn more money for the state under this plan than any other; but it has been strenuously opposed by prison reformers because of the difficulty of maintaining a reformatory discipline, and because of the liability to cruel treatment, over-working and under-feeding. This system has now been abolished in many of the southern states where it formerly prevailed.

(2) **Contract System.**—Under this system labor is sold to the contractor, but the prisoners are usually worked within the prison walls at some form of manufacturing; and the guarding, feeding and discipline of the prisoners remain under the control of prison officers. The contract system has been bitterly opposed on the same grounds as the lease system, and also by labor organizations, on the ground that it gives undue advantage to the contractor, enabling him to dictate prices, and is used to bid against free labor.

(3) **Piece Price System.**—A method by which the contractor furnishes machinery and materials and the state is paid for the labor of the prisoners by the piece. It has been claimed that this system was free from the objections to the contract system because the contractor reaps no advantage from speeding the prisoner. The system, however, is not widely used.

(4) **State Account System.**—Under this system the state furnishes the capital and carries on the business as a state enterprise, selling the goods produced on the market. This system involves large capital, usually, from $1,500 to $2,500 per man and demands first class business ability. It has been operated successfully in the Detroit House of Correction, the Minnesota State Prison and some other prisons. It has failed in many prisons because of the difficulty of carrying on the business economically and efficiently, and because state legislatures were unwilling to provide sufficient capital or to pay adequately for competent business talent.

(5) **State Use System.**—Under the state use system the labor of the prisoners is employed upon articles which are consumed in the public service by the state, county and city governments, school boards, etc. Under this system the manufacture of clothing, shoes, brooms, brushes, wagons, office furniture, house furniture, school furniture, etc., is carried on extensively. Usually the law provides that the state, county and municipal authorities must purchase these goods if they can obtain as good quality and as good prices as elsewhere. This system has been followed in the state

of New York for several years and is now being taken up by other states. It has the advantage of being generally accepted by the labor organizations. One form of it is the employment of prisoners in the reclamation of lands and the erection of buildings for the use of the prison. Another form is the building of public roads.

(6) **State Farm System.**—Several southern states have purchased large plantations which are operated by the state with convict labor, the products being partly consumed in maintaining the prisoners and partly sold in the public markets. A considerable number of northern prisons are purchasing farms adjacent to the prison for the employment of inmates. The state farm system has been worked successfully in Massachusetts for many years. In favor of this system it may be said that the prisoners may be kept in permanent places; it does not expose them to the public view; it gives them healthful outdoor life; it is possible to instruct them in ways of earning a livelihood; and it does not arouse public opposition. Some of the state farms in the south are already highly profitable to the state.

There is a strong public sentiment in favor of some method of employing prisoners which will produce a surplus to be used for the maintenance of the prisoner's family at home during his confinement. The trouble in the past has been that nearly all of the prisons have produced an annual deficit instead of an annual surplus; but it is believed that an able bodied man ought, under proper organization, to earn more than the cost of feeding, clothing and guarding him in institutions where the plant is furnished by the state and no interest needs to be earned upon it.

See CRIMINAL, REFORMATION OF; CRIMINOLOGY; PENITENTIARIES; PRISON DISCIPLINE; PRISON LABOR; ROADS.

References: American Prison Assoc. (formerly National Prison Assoc.), *Reports* (1870 to date); (See Index to reports, 1906); Wisconsin Bureau of Labor and Industrial Statistics *Report*, 1909, 145–210; F. H. Wines, *Punishment and Reformation* (1910); C. R. Henderson, *Outdoor Labor for Convicts* (1907); G. W. Cable, *The Convict Lease System* (1883); Z. R. Brockway, *Fifty Years of Prison Service* (1912); R. B. Hardy, *Digest of the Laws and Practices of All the States of the Union in Reference to the Employment of Convicts* (1911); Ontario Legislative Assembly, Special Committee on Prison Labor (in the U. S.), *Report*, 1908; E. S. Whitin, *Penal Servitude* (1912); C. D. Wright, *Some Ethical Phases of the Labor Question* (1902), 161; U. S. Industrial Commission *Report on Prison Labor*, 1900; C. R. Henderson, *Penal and Reformatory Institutions* (1910); Ohio State Bureau of Labor Statistics, *Special Report on Prison Labor*, 1910; U. S. House of Representatives, Sub-Committee No. 4, Committee on Labor, *Report on Competition of Penal Labor*, 1908; *Commissioner* of Labor, "Report on Convict Labor" in *Annual Report*, No. 2 (1886), *Annual Report*, No. 20 (1905); *Am. Year Book, 1910; ibid, 1911*, and year by year. HASTINGS H. HART.

CONWAY CABAL. A faction in 1777 made up of members of Congress and army officers unfriendly to Washington, whose object was by intrigue to effect the retirement of Washington, and to put Gates in his place at the head of the continental army. It received its name from the chief conspirator, Conway.

O. C. H.

COODIES. The name of a political faction in New York state which sprang up in 1814 under the leadership of Gulian C. Verplanck whose political articles appeared in the New York papers over the name "Abimaleck Coody." As a Federalist he appealed to that party to cease opposing the war. The Coodies were hostile to the Clintonians. O. C. H.

COOLEY, THOMAS McINTYRE. American jurist and publicist; was born in New York in 1824, moved to Michigan (1843), was admitted to the bar in 1846, was reporter for the supreme court of Michigan (1858–65), and was appointed professor of law at the University of Michigan (1859), a position which he occupied for some twenty-five years. In 1864 he was elected to the supreme bench of the state and, by reëlection, held the position for twenty-one years. He was made professor of American history and constitutional law in the university in 1885 and held this title till his death (September 12, 1898), although not in active service a considerable portion of the time. He was the first chairman of the Interstate Commerce Commission (1887–1891).

Judge Cooley won high distinction as a judge; but his greatest reputation rests on his publications. His *Constitutional Limitations* (1st ed., 1868; 7th ed., 1903) showing learning, lucidity of statement, and firm grasp of essentials, is a signal contribution to legal literature. He also wrote volumes on *Taxation, Torts, Principles of Constitutional Law, Michigan* (in the *American Commonwealth Series*) and edited Blackstone's *Commentaries* and Kent's *Commentaries*.

See INTERSTATE COMMERCE COMMISSION.

References: B. A. Hinsdale, *Hist. of University of Michigan* (1906), 234; H. B. Hutchins, "Thomas McIntyre Cooley" in *Great Am. Lawyers* (W. D. Lewis, Ed., 1909), VII, 429–492.

A. C. MCLAUGHLIN.

COOLIE TRADE. Refers to the traffic whereby laborers, ordinarily unskilled, have been procured from oriental countries for employment on plantations, railway and canal

construction, and in various other enterprises in western countries and their colonies. They were engaged on contract, including maintenance, wages, and a return to China after the expiration of the agreed number of years' service. The system was saturated with abuses, and approached chattel slavery, hence the trade was prohibited by statute of Congress, Feb. 19, 1862. Many Chinese laborers brought to the United States, however, have come under contract with Chinese companies, which have forwarded them, and are entitled to a certain payment from them. These contracts are seldom made known to the authorities. See CHINA, DIPLOMATIC RELATIONS WITH; CHINESE IMMIGRATION AND EXCLUSION; LABOR, RELATION OF THE STATE TO; PEONAGE. **References:** J. W. Foster, *Am. Dipl. in the Orient* (1906), 280, 283; A. S. von Waltershausen, art. "Kuli" in J. Conrad *et al., Handworterbuch der Staatswissenschaften*, VI (3d ed., 1910), 285–288; art. "Einwanderung" in *ibid*, III (3d ed., 1909), 767–769; art. "Chinesenfrage" in *ibid*, III (2d ed., 1900), 44–48; M. R. Coolidge, *Chinese Immigration* (1909), 17–19, 43–52; E. G. Payne, *An Experiment in Alien Labor* (1912); Prohibitions in United States: Act of Feb. 19, 1862, in *Revised Statutes of United States* (2d ed., 1878), 376–377; Act of March 3, 1875, in *Supplement to Revised Statutes of United States*, I (1891), 86–88. E. H. V.

COÖPERATION. The coöperative societies in England and on the continent of Europe are much better known than in the United States. All are defined by their chief exponents as associations for the purpose of joint trading, originating among the weak, and conducted always in an unselfish spirit on such terms that all who are prepared to assume the duties of membership may share in its rewards in proportion to the degree in which they make use of their association. There are four chief forms of coöperative effort: (1) coöperative banks (on the continent of Europe known as credit societies); (2) coöperative agricultural societies; (3) coöperative workers' society; (4) coöperative stores. The purpose of all coöperative organizations is to do away with middle men who either furnish capital in productive enterprises or market goods in the distribution of products. A small beginning has been made in this country in coöperative agriculture but otherwise the movement is little known in the United States. See PROFIT SHARING. **References:** C. R. Fay, *Coöperation at Home and Abroad* (1908); T. L. Coulter, *Coöperation Among Farmers* (1911). S. McC. L.

COÖPERATIVE LOAN BANKS. See BANKS, COÖPERATIVE LOAN.

COPPERHEADS. A name originating in the autumn of 1862, applied by the Unionists during the Civil War to the northerners who sympathized with the southern Confederacy. Taken doubtless from the name of the copperhead snake which, unlike the rattlesnake, strikes without warning. In colonial days the name was applied by the Yankees, as a term of contempt, to the Dutch colonists of New York. O. C. H.

COPYRIGHT. Copyright is the exclusive right secured to an author by statute to reproduce and publish his work. The earliest copyright statute was the British Act of 1709. Such legislation in the United States began with the copyright laws of the original states, 1783–1786, and the first federal act of 1790. The earliest general copyright law of France dates from 1793. Legislation by one country after another has followed until the civilized world now protects its intellectual producers.

Starting with England's short term (14 years with renewal for 14 years more), the trend has been towards a much longer period of protection; until the most general term is now the author's life plus 50 years, adopted by the International Copyright Union and 18 countries, including Great Britain. Copyright is granted in Spain, Cuba, Colombia and Panama for 80 years after the author's death, and in four Latin-American countries literary property is protected without expressed limits. The tendency, also, is toward enlarged protection, release from formalities and freedom from burdensome conditions; as is exemplified in the British act of 1911.

Marked advance has been made in international copyright. A long series of treaties has given place to the more practical International Union, instituted by the Berne Convention of 1886, amended at Paris, 1896, and at Berlin, 1908. The notable Berlin agreement creates a sort of international citizenship for literary and artistic producers and secures copyright for their works in all the countries of the Union without any formality whatever. A parallel convention was signed at Buenos Aires August 11, 1910, by the Latin-American States and the United States, whereby copyright obtained in one state is protected in all the other countries of the Union without other formality than a notice of copyright in the work.

Copyright in the United States (act of March 4, 1909) is now secured for a first term of 28 years, with right of renewal for an equal period, upon publication of the work with the prescribed notice. It includes the exclusive right to translate, dramatize, and represent the work, and (when music) to perform it publicly for profit; and to exact a fixed royalty for its reproduction by mechanical instruments. Deposit of copies for registration, and the manufacture within the United States of lithographs and photo-engravings are obligatory. Copyright books in the English lan-

guage must be typeset in the United States; no plates can be imported, nor books except one copy at one time, for a public library or for individual use and not for sale. These manufacturing requirements bar the United States from entering the international union; but foreign authors were granted copyright by the act of March 3, 1891, and copyright relations have been established by presidential proclamations with 19 countries. Copyright treaties also have been made with China (1903), Japan (1905 and 1908), and Hungary (in force October 16, 1912). The copyright conventions of Mexico (1902), and Buenos Aires (1910), have been ratified, but the latter is not yet in operation (1913).

See MONOPOLIES; PATENTS FOR INVENTIONS; TRADE-MARKS.

References: International copyright: W. Briggs, *Law of Int. Copyright* (1906); Int. Copyright Union, *Report of the Berlin Conference,* 1908; *Le Droit d'Auteur* (monthly organ of Union since 1888). England: *British Copyright Act,* (1911); E. J. MacGillivray, *Brit. Copyright Act* (1912, annotated); G. S. Robertson, *Law of Copyright* (1912); B. Weller, *Stage Copyright* (1912). UNITED STATES: *Act of March 4, 1909;* R. R. Bowker, *Copyright, its Hist. and its Law* (1912).

THORWALD SOLBERG.

CORN-CRACKERS. A name given to the "poor whites" in the southern states, especially in North Carolina, Georgia and Florida, originating, it is said, from the fact that they subsisted largely upon a diet of cracked-corn. It is also a nickname for a native of Kentucky.

O. C. H.

CORNERS IN COMMODITIES. A corner in a commodity exists when one operator—individual or group—holds contracts requiring delivery within fixed time limits, of quantities so large that the supplies not under his control are inadequate to meet current demands for consumption and also for fulfilling those contracts. This situation compels repurchase from the operator, or repudiation of contracts by the "cornered." Rising prices attend its creation; and the belief that the corner is "effective" may precipitate a crisis. The operator takes his profit by canceling contracts at prices fixed by agreement; or he cautiously releases at high prices supplies only sufficient to cancel contracts, and subsequently sells his remaining holdings at market prices. In the latter case, profits realized on supplies sold at high prices must be set against possible losses in selling the remainder. Whether the balance be profit or loss depends on success in: (1) contracting at low prices; (2) selling while in control of the supply at high prices; (3) disposal of the remainder without undue delay or depression of price.

These processes hinge partly on control of ample financial resources, and masterful manipulation in creating and closing out the corner; but chiefly on correct estimates, or fortunate guesses, as to the available supply. Credit and exchange facilities enable the operator to enter contracts on margin for his cash resources and to operate secretly and extensively. But quick communication and transportation make available the world's supplies for "smashing" a corner, and the coming forward of supplies in excess of the estimates means disaster for the operator. The elasticity of supply makes corners more difficult in commodities than in securities of known and limited issues; and induces attempts at seasons when the supplies are lowest and least elastic, as wheat in the spring.

Corners in commodities are inimical to general welfare. The violent price fluctuations cause hardships for consumers, and, especially in staple materials—such as wheat, cotton, and copper—disturb industry, commerce and transportation—even closing mills, arresting trade movements, and bringing about unemployment. Noted wheat corners are those by Armour-Kershaw (1882), Leiter (1898), and Patten (1909). Legislation seems impotent to prevent corners without stifling forms of speculation still deemed serviceable in maintaining stability of prices. Japan "smashed" a rice corner (1911) by suspending import duties and transactions in "futures," while holding in reserve possible free transport on government railways and the obligation to accept imported rice in settling contracts.

See EXCHANGES, BUSINESS; FUTURES, DEALING IN; GAMBLING; MONOPOLIES; WAREHOUSE SYSTEM.

References: H. C. Emery, *Speculation on the Stock and Produce Exchanges of the U. S.* (1896), 173–176, 182, 196–199, 219–223; J. S. Jeans, *Trusts, Pools and Corners* (1894), ch. xvi; C. C. Parker, "Governmental Regulation of Speculation" in Am. Acad. of Pol. and Soc. Sci., *Annals,* XXXVIII, No. 2 (1911), 141–150, 153; W. B. Halhed, "On Commercial 'Corners'" in *Nineteenth Century,* X (1881), 532–537.

E. H. VICKERS.

CORONER. A county officer in England, developed in the later middle ages, who had a wide jurisdiction in criminal and civil cases. The office has survived both in England and the United States, as a means of holding inquests in cases of sudden death, to determine whether there is occasion for criminal proceedings.

In England, the early method of electing coroners has been recently changed to appointment by the county councils; and the office is also now filled by appointment in New England and some of the southern states. But in most states coroners are elected for terms of two or four years; and usually no special qualifications are prescribed by law.

Coroner's inquests served a useful purpose in the absence of a system of public prosecuting officials; but the procedure is now antiquated and often inefficient. In Massachusetts, coroners were abolished in 1877; in their places medical examiners are appointed; and where their reports show evidence of crime, further action is taken by the regular prosecuting officers. There has been much complaint of the elective coroners in New York City.

See COUNTY COUNCIL IN GREAT BRITAIN.

References: J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906), 112–115.

JOHN A. FAIRLIE.

CORPORAL'S GUARD. The small coterie of Senators and Representatives who supported the administration of President John Tyler, (*see*), 1841–45, while the majority of the Whig members under Clay's leadership (*see* CLAY WHIGS) opposed the administration.

O. C. H.

CORPORATION CHARTERS

Definition and Origin of Corporations.—Following the language of Lord Coke in 1613, Chief Justice Marshall, in the Dartmouth College case (*see*), in 1819, defined a corporation as "an artificial being, invisible, intangible, and existing only in contemplation of law." A corporation has a distinct existence, separate from that of its stockholders and directors; and must be created by or under legislative enactment. The domicile, residence and citizenship of a corporation are in the state where it is incorporated.

Among the Romans, corporations were well known institutions and in fact were much the same as the modern corporations. England, by the common law, adopted the corporate entity; yet few business corporations existed until modern times, when need was felt for employment of large amounts of capital in special undertakings.

Special and General Charters.—A charter is the instrument which creates the corporation. Previous to 1837 charters could be procured in no state other than by special act of the legislature, a separate act being required for each charter. In that year Connecticut, by its legislature, passed the first general corporation act known in this country; it has been the model for such statutes in the United States.

At present many states, by their constitutions, require that the legislature shall pass general acts wherever possible so that by the simple filing of an instrument as prescribed a corporation may be formed without direct application to the legislature. These general acts specify the contents of such instruments as well as the powers of the corporation. In a leading case in the courts of Illinois it was held that corporations organized under the general law are vested with the powers "conferred by the general act, and those contemplated by the certificate, and such incidental powers with respect to the general and special powers as are necessary, in the sense of convenient, reasonable and proper."

Enlargement of Charter Privileges.—One of the modern developments of corporations has been the tremendous enlargement of corporate purposes and powers. Gradually the restrictions of the earlier incorporation acts have been relaxed so as to permit of incorporation for almost any lawful purpose. Among the powers desired and granted which were not permitted at common law were the right to hold stock and bonds in other corporations, to amend unrestrictedly their charters, and to perform constituent acts outside of the domiciliary state.

The scope of the corporation acts was widened *pari passu*, by a natural evolution, in order to meet business needs of rapidly growing industrial communities. Many state legislatures rose to the exigency by enacting statutes requiring persons incorporating within any such states to pay a license tax graduated in accordance with the capitalization of the corporation. This has had the effect, agreeable to the average taxpayer, of decreasing the proportion bonded in land and personal property. Under the advice of counsel specializing in corporation law and conversant with these acts, persons proposing to incorporate have gone for their charters in recent years to those states which are now commonly known as the leading incorporating states, especially New Jersey (till 1913) and West Virginia.

Effect of General Laws.—The general laws of the state apply to a corporation organized under a special act only so far as those general laws are consistent with the special act. It has been held, and it seems good law to-day, that where there is a general act providing for twenty years' duration of corporations, the duration of a corporation is twenty years, although its special charter, created after the date of the statute provides for "perpetual succession." Equally clear is the principle of law that a general statute reserving to the state the right to amend or repeal charters is a part of all special charters thereafter passed, even though not expressly made a part thereof. Where a special charter is granted and nothing is prescribed as to its duration, it is perpetual, in the absence of contrary provision in the general laws of

the state in which the special charter is granted.

Franchises.—The legal idea of a franchise seems to be a power, or privilege, conferred by the state on some legal person, not possessed by the inhabitants of the state as of common right. A charter contains the grant of a franchise but it is clearly not the franchise itself. The word "franchise" in a taxation statute has been construed to mean the entire property, tangible and intangible, when so intended. The United States Supreme Court, in important cases during recent years, has held, and it is well settled law today in this country, that every public grant of property or of privileges or franchises, if ambiguous, is to be "construed against the grantee and in favor of the public." Especially is this so in respect to corporations organized under general laws. It follows that the words "franchises, rights and privileges" do not necessarily include an exemption from taxation. On the other hand a corporation, though chartered to exist only a limited number of years, may accept a franchise, for example for the use of a street, for a period longer than its own charter exists and it may take a fee to real estate and enter into a contract which cannot be fully performed during the corporate existence.

Charters are Essential.—In this country it is generally recognized that legislative authority is essential to the creation of a corportion. The state creates the corporation upon application of individuals, called incorporators. The corporation is then organized. The functions of the incorporators thereupon terminate and stockholders of the corporation proceed to contribute the capital and elect directors. The directors then set in operation, and continue to keep in operation, the powers of the corporation. Incorporators cannot come together and agree to become a corporation without conforming to legislative requirements. The instrument by which corporators are created is known in various parts of the country by different names. The common law, employed the term "charter," which originally referred to the grant of specified privileges by the sovereign to the subject. The ward "charter" has been applied subsequently and now to a specific act of the legislature creating a corporation with distinct and exclusive purposes and powers. In the parlance of business corporation acts in this country, the word "charter" has been replaced in several of the states by such terms as "petition" for incorporation," "certificate of organization," "certificate of incorporation," "articles of association" and "articles of incorporation."

The essence of a corporation which therefore must be set forth in its charter is: (1) capacity to have perpetual succession under a special name and in artificial form; (2) to take and grant property and contract obligations, sue and be sued by its corporate name as an individual; (3) to receive and enjoy corporate privileges and immunities. The first two may be aptly distinguished as the privileges of the incorporators, and the third as the franchise of the corporation.

Process of Incorporation.—The various steps necessary at this day to create a corporation, which shall be qualified in all respects to carry out the purposes for which it is formed, are as follows: (1) drafting of the articles of incorporation; (2) signing of those articles by the requisite number of incorporators and acknowledging the same before a duly authorized officer; (3) filing and recording the articles with the proper state and county officials after payment of requisite organization tax, filing and recording fees; (4) organization of the corporation ready for the transaction of business; (5) securing the necessary permit from officials, if (as in most states) such permit is required, to transact business within the domiciliary state.

Though incorporators must in all cases be of full age, and known persons, the modern rule in the United States seems to be that incorporators are merely conduits for the purpose of organization for the benefit of future stockholders. Under this rule there can be no valid legal question raised at this day as to the legality of the use of what are commonly known as "dummy incorporators" in the organization of corporations.

In the granting of corporate privileges it is important to specify the purposes and objects in order that courts may have some guide, in keeping them within the powers granted and conveyed. There is an obvious reason for making such organization by written articles of agreement a condition precedent to the exercise of corporate rights. It is the basis upon which all subsequent proceedings are to rest, and is designed to take the place of a special charter or act of incorporation by which corporate rights and privileges are usually granted. Otherwise it would not be possible definitely to fix and establish the right to exercise corporate powers; and there would be no means of ascertaining the rights of stockholders and of persons dealing with such association.

Collateral Attack.—This is a term used in corporation law, for an attempt of parties other than the state, in direct proceedings, to question the validity of a corporation's existtence and purposes, or its right to exercise; upon this question, conflicting decisions fill the law reports. The apparent confusion which exists among the courts on this matter is largely due to their failure to recognize that the process has been practically taken away. Such inquiry is forbidden in this country in several ways: (1) by statutes expressly forbidding such collateral attack; (2) by authority vested in state officials to issue

certificates of due incorporation which are not open to collateral attack; (3) by statutory provisions giving to certified copies of articles of incorporation certain probative effect; (4) by an extended application of the principle of estoppel; (5) by a process of judicial legislation denying on grounds of public policy the right of parties other than the state to attack the legality of corporate existence, purposes and powers. The policy of forbidding the impeachment by indirect methods of a corporation's right to exist rests upon the fact that such attacks are rarely made except in an attempt to defeat the ends of justice, by setting up defences to actions brought against debtors by corporations, in which the parties interposing have generally no direct interest. Under present laws and decisions corporations are not required, years after their creation, to establish the validity of corporate existence, purposes and powers.

Corporate Purposes.—By corporate purposes is meant the specific declaration, in the articles of incorporation, of the nature of the business which the corporation is authorized to carry on, a matter which concerns both the stockholders and also the state, inasmuch as in the United States a corporation can exist only by statutory authority. If a corporation organizes under a general act, and inserts in its articles of incorporation regulations and provisions additional to those required by the creative statute, such additional regulations and privileges are voidable at the will of the state. The corporation is not permitted to place any restrictions upon the manner of exercising its corporate duties other than the statute provides. If the corporation claims the right to exist for a certain purpose, it must show that it was organized under a statute authorizing the creation.

By "corporate powers" is indicated the right or authority of a corporation to act along certain lines prescribed for it in the instrument whereby it was created. The tendency of modern decisions is to assimilate the powers of private corporations to those of individuals and copartnerships. A corporation cannot assume for itself powers of action, irrespective of statute, by mere declaration thereof in its articles of incorporation, or by assuming creation of the same by its by-laws. The United States Supreme Court has laid down the general doctrine, which has never been controverted with any degree of success, that the powers of corporations organized under general statutes are such, and such only, as are conferred by the statute. Under the usual rule applicable to statutes, that which is fairly implied is as much granted as what is expressed; hence the charter of the corporation is the measure of its powers, and the enumeration and limiting of these powers implies the exclusion of all others. This is true only as to those classes of powers known as "express powers," the rule not being applicable to those familiarly known as "common law" or "incidental" powers of corporations.

Corporate powers may be divided properly into three classes namely, common law, express and incidental. There is no existing rule or principle, however, by which corporations created for a certain specific object, or to carry on a particular trade or business are prohibited from all other transactions or dealings not coming within the exact scope of those designated. Doubtless the main business of a corporation should be confined to that class of operations which properly appertains to the general purposes for which its charter was granted; but it may also enter into contracts and engage in transactions which are auxiliary or incidental to the main business, or which may become profitable or merely necessary in the care and management of the property which it is authorized to hold. So of powers which are held to exist at common law even in the absence of any specific reference to them in the articles of incorporation.

Common Law Powers.—These are enjoyed by corporations irrespective of statute or charter provisions, as being necessary for properly carrying out the purposes for which they are created. Such are the right to the use of a corporate name; the right to perpetual succession; the right to appoint corporate agents and officers; the right to make by-laws for the government of the corporation itself, its members and officers; the right to acquire, hold and dispose of corporate property; and the right to sue as well as to be sued. The common law gives to corporations the powers belonging to corporations of their class, in the absence of some general restricting statute, unless there is something in the nature of the corporation or in the terms of its charter, or in the act under which it was incorporated, inconsistent with the exercise of the powers.

An enumeration of these common law powers is contained in the corporate acts in force in the several states. Perpetual succession conveys ordinarily the right of continued, unbroken operation for the period of time limited for the corporate existence.

Incidental Powers.—The principal incidental powers are those to make contracts, to borrow money, to give and accept customary evidences of debt, and to mortgage or pledge real and personal property. Clearly the implied powers which a corporation has in order to carry into effect those expressly granted, and to accomplish the purposes of its creation are not limited to such as are indispensable for those purposes, but comprise all that are necessary in the sense of appropriate, convenient and suitable, including the right of reasonable choice of means to be employed. Acts of a corporation which, if standing alone or engaged in as a business would be beyond its implied powers, are not necessarily *ultra vires* when they are incidental

to or form part of an entire transaction which, in its general scope, is within the corporate purpose. The validity of such a transaction is to be determined from its general character.

Ultra Vires.—As to the ancient doctrine of *ultra vires*, a contract of a corporation which is unauthorized by or in violation of its charter, or entirely outside of the scope of the express purposes of its creation, or beyond the powers granted to it by the charter or by statute, was declared by early decisions void as being no contract at all, because of lack of power to enter into it and because it could not be made valid by ratification or by any number of renewals, and so it was anciently held that no performance on either side could give validity to the unlawful contract. Modern tendency of the courts is to change the doctrine of *ultra vires*. The claim that a contract is void because under the charter it is beyond the power of a corporation, is seldom recognized as a defense to an agreement otherwise unobjectionable, and never where it would defeat the ends of justice or become a shield against wrong. The doctrine of *ultra vires* is not usually applied where the party setting it up has received a benefit from the unlawful act relied upon as a defense. Where the most that can be said of a corporate act is that it is an abuse of power, the state alone can act. The doctrine that persons dealing with corporations are bound to take notice of their powers, is now practically done away with, upon the theory of estoppel in the case of completed contracts.

Taxation.—A state may tax the franchise of a domestic corporation, or impose a license tax upon a foreign corporation engaged in interstate commerce, or in the employ of the general government because all business, whether of individuals or corporations, is and properly should be, affected by common governmental burdens. The power to license is a police power, although it may be exercised for the purpose of raising revenue.

A state may tax corporations for their privileges within the state in lieu of all other taxes, provided the amount is made dependent upon the value of the property within the state, and payment is not a condition precedent to the right to carry on its business. It has been held, and it seems clearly right upon principle, that the tax then becomes a mere property tax and not an interference with interstate commerce.

The existence of federal supervision over interstate commerce is not inconsistent with the power of the state to control its internal commerce and to tax franchises, property, or business of domestic corporations engaged in such commerce, nor with power to tax foreign corporations on property within the state.

Recall of Charters.—No corporation has the power to dissolve itself, without the expiration of its charter, or by express consent from some governmental authority or under a statute describing the method of voluntary dissolution. Charters may, however, be forfeited, for any one of the following reasons: (1) non-use of corporate franchises; (2) mis-use, or abuse of corporate powers; (3) neglect to complete the legal forms of organization; (4) non-performance of conditions necessary for a valid continuation of existence; (5) violation of expressed conditions in statutes; (6) non-payment of taxes; (7) insolvency.

Abuse of powers or non-performance of conditions do not *ipso facto* cause the dissolution of a corporation; but may become the basis of judicial proceedings to that end. The usual process is a writ of *quo warranto*, under proceedings instituted by the attorney-general, which may result in a judgment that the charter is forfeited. The writ of *scire facias* is used to bring out a defect in the charter itself. Recent instances of judicial dissolution are those of the Standard Oil Company and the American Tobacco Company in 1912 (221 *U. S.* 1, 31 *Sup. Ct. R.* 502 and 632). The corporation known as the Church of Jesus Christ of Latter Day Saints was declared dissolved by the act of Congress of 1882, commonly called the Edmunds Act.

See Corporation, Public; Dartmouth College Case; Franchises, Corporation; Holding Companies; McCulloch vs. Maryland; Monopolies; Munn vs. Illinois; Public Service Corporations; Publicity of Corporate Accounts; Quasi-Public Corporations; Vested Rights, Protection of.

References: S. D. Thompson, *Commentaries on the Law of Private Corporation* (2d ed., J. Y. Thompson, Ed., 1808–1910); **T.** Conyngton, *Manual of Corporate Management* (3d ed., 1909), *Organization and Management of a Business Corporation with Special Reference to the Laws of New York, New Jersey, Delaware, West Virginia* (1900); W. C. Clephane, *Organization and Management of Business Corporation* (1905); W. L. Clark, *Handbook of the Law of Private Corporations* (2d ed., F. B. Tiffany, Ed., 1907); W. W. Cook, *Treatise on the Law of Corporations Having a Capital Stock*, (6th ed., 1908); bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), § 269. Ralph Woodworth.

CORPORATION COUNSEL. See City Attorney.

CORPORATION, PUBLIC. In the classification of corporations into public and private a recognized distinction is that the former are created for the general public benefit in effecting purposes of government and not for the presumed benefit or advantage of the members as individuals. Of this class are municipal corporations including incorporated cities, towns, and villages. To these corporations some powers of local self-government are dele-

gated. Other sub-divisions of the state, created for purposes of government, such as counties, townships, and school districts, are sometimes expressly declared to be public corporations (although not municipal), while in other states they are not invested with a corporate character and are then called quasi-corporations The federal and state governments are sometimes inaccurately spoken of as public corporations because they have some of the characteristics of a corporation, such as perpetual succession, power to own and control property, and power to sue, but they do not derive their authority from a legislative source, the constitutions providing for their creation not being, in a proper sense, corporate charters.

Public corporations are distinguishable from private in that they have not vested rights of existence. Their charters or the statutes providing for their creation are not contracts in the sense that they may not be changed or impaired by subsequent legislation (*see* CONTRACT, IMPAIRMENT OF). Their territorial limits may be expanded or contracted in accordance with the legislative will. They may, however, have vested rights of property, being in a sense dual in character, in some respects authorized to act wholly in a governmental capacity, in other respects authorized to own and control property held for public purposes.

See CORPORATION CHARTERS; COUNTY GOVERNMENT; MUNICIPAL GOVERNMENT; QUASI-PUBLIC CORPORATIONS; VILLAGES, INCORPORATED.

EMLIN MCCLAIN.

CORPORATIONS, BUREAU OF. The Bureau of Corporations was created by act of Congress of February 14, 1903, establishing the Department of Commerce and Labor (*see*); and by act of March 4, 1913, dividing the Department, this bureau became part of the Department of Commerce. The purpose of the bureau is to gather and publish information concerning the organization and activities of business corporations, other than common carriers, interested in interstate or foreign commerce, with some reference to the anti-trust act of 1890 (*see* SHERMAN ACT). Its policy has been to collect complete information about certain selected corporations and industries, and to lay the facts clearly before the public by means of exhaustive special reports and brief summaries in about five printed pages framed particularly for the press. This policy of "efficient publicity" has given excellent results for the limited number of industries and corporations which the bureau could cover with its moderate appropriation ($254,120 in 1910, total number of employees on June 30, 1910, 119). In 1906 the bureau published a report on "Transportation in the Petroleum Industry," describing the railroad discrimination enjoyed by the Standard Oil Company. The result of this publicity was the cancellation by the railroads concerned of every rate which the report condemned as illegal, as well as many others criticized as inequitable. Other reports have followed on the "Standard Oil Company," "Cotton Exchange," "Tobacco Combination," "Water Powers," "Transportation by Water," "Taxation of Corporations," "Lumber Industry," "Report on Cotton Fare," and "Control of Water Carriers by Railroads." At the end of the fiscal year, 1910, further investigations were being prosecuted into the taxation of corporations, the tobacco industry, transportation by water, the concentration of water-power ownership; and fresh investigations had been inaugurated into the steel industry, and into the International Harvester Company. See COMMERCE, DEPARTMENT OF; FRANCHISES, CORPORATION; PUBLIC SERVICE CORPORATIONS; SHERMAN ANTI-TRUST ACT; TRUSTS. References: Department of Commerce and Labor, *Annual Reports* (1903–1912); Department of Commerce, *Annual Reports*.

A. N. H.

CORPORATIONS, TAXES ON

Basis.—The earlier practice in the United States was to tax corporations or natural persons, and to assess shares of stock, as personal property to the owner of the stock. Certain kinds of corporations, more particularly banks, which possessed the special privilege of issuing circulation, were from the beginning of the nineteenth century subjected to a special tax; and in some states the bank tax constituted an important item in state revenue. Owing to this early development, the taxation of financial institutions has reached a fairly uniform and stable system (*see* BANK TAXES).

With the rapid growth of corporations after the Civil War, marked by the conversion of all forms of business undertakings, except farming, into the corporate form, it was found more and more difficult to reach stock ownership under the personal property tax. The physical property of the corporation could be discerned and taxed as real estate, but the value of the corporation, as a business, represented by the value of the shares which were owned by stockholders, often scattered far and wide, escaped taxation, if the owners neglected to return their holdings. Special taxes were consequently devised to reach corporate property. Particularly is this true of railroads, street railways, telegraph, telephone, express, car, gas, electric light, and insurance compa-

nies. A few states have brought manufacturing and mercantile corporations also within the scope of special taxation.

Lack of Uniformity.—The result is that there is no uniformity in taxing corporations in the different states. Nor does any state tax all the different kinds of corporations in the same way. Especially varied are the methods applied to public service corporations, as railroads, street railroads, telephone, telegraph, gas, electric light and power, express, car and water companies. As these frequently possess monopoly privileges, public opinion has been more insistent that they be subject to special taxation. Often the earnings of such companies are in no way dependent upon visible property, as in the case of express companies; or if there be property, it may extend over a wide territory. As a consequence, legislatures have resorted to most ingenious and complicated schemes in order to bring such corporations within the scope of the revenue power. In most states the method of taxing public service differs from that of taxing mercantile and manufacturing corporations. A further reason for existing confusion in the taxation of corporations lies in the constitutional provision found in many states requiring that all taxes shall be uniform; consequently, under the principle of property taxation there can then be no discrimination between the property of individuals and corporations.

Franchise Taxes.—In order to escape this obstacle there is an increasing tendency to treat a corporation tax as a franchise tax, that is a payment to the state for the privilege granted by the state to the corporation to carry on its business. As Seligman points out:

> If the corporation tax is held to be a franchise tax, there is no necessity of such uniformity between the tax on individuals and that on corporations. Secondly, according to the principles of the property tax, deductions are allowed for certain classes of exempt or extraterritorial property. If the tax is a franchise tax, such exemptions cannot be claimed. Thirdly, if the tax is a franchise tax, and not a tax on property or earnings, it may be upheld as not interfering with interstate commerce. Finally, if the tax is a franchise tax many of the objections to double taxation would be removed. Every commonwealth imposing a franchise tax, for instance, could assess the entire capital of a corporation, although only a very small portion might be located or employed within the state.

This principle of taxing the corporate franchise has been applied in its most logical form in Massachusetts. The real estate and machinery of all home corporations except banks, trust companies and insurance companies, situated within the state, are taxed by local authorities. The remainder of the property of the corporation, as indicated by the market value of the shares, over and above the real estate taxed locally, is taxed by the state under the corporation or franchise tax, and the taxes are paid into the state treasury. The proceeds, however, in so far as shares are held in the state, are distributed back to the cities and towns. This is known as taxing the corporate excess.

In Connecticut this method is also applied to steam and street railroad companies, bonds, however, as well as stock being used to measure the capital value of the corporation. In New York, in addition to the tax on property, the corporation, with certain exceptions, pays a tax on its franchise, known in this instance as the capital stock tax. Here the tax is based on the capital stock measured by its assets employed within the state, while the rate varies according to dividends and the market price of the stock. The imposition of a tax upon the capital stock of corporations has been favored in that it is difficult to tax stocks and bonds in the hands of owners through the general property tax. The corporations are, therefore, taxed, and the owners of the securities are exempt.

Usual Methods.—In brief, the most important of the different methods of taxing corporations may be summed up as follows: (1) general property tax; (2) capital stock tax; (3) receipts or earnings tax; (4) mileage tax; (5) corporate loans tax; (6) lump-sum tax; (7) business license tax; (8) corporate excess tax. The general property tax, even where other methods are used, is generally applied to the physical property of the corporation, and in New Hampshire, Indiana, and Michigan it is the only tax. In many states there are combinations of two or more of the above methods. For example, in addition to the general property tax, some states, as Rhode Island, Illinois, and Wisconsin, employ the receipts or earnings method; Maine, New York, New Jersey, Maryland and Ohio use the earnings and the capital stock methods; Pennsylvania, the capital stock, earnings, lump-sum and corporate-loan methods. The tax on receipts or earnings is peculiar to railroad, car, express, telegraph and telephone companies; the mileage method, to express, telegraph and telephone companies; the lump-sum method, or a specified tax in commutation of all other taxes, to railroads, as in Delaware; and the corporate-loan tax, to both tranportation and manufacturing corporations in Pennsylvania. Under this method each corporation when paying interest on any debt or obligation must deduct and pay into the state treasury four mills on every dollar of the face value of the debt. Such payment exempts the holders of the obligation from further tax.

Example of New Jersey.—The foregoing statements, however, but inadequately show the complications of the corporation tax system for a given state, and for a typical state further illustrative details may be given. In New Jersey the real and personal property of all corporations is taxed locally for local purposes, like that of individuals, or natural persons. In addition there is a franchise tax

based on the par value of the capital stock, which is paid to the state. This does not apply to railroad, canal and other public service corporations or to all domestic corporations engaged in manufacturing when 50 per cent of the capital stock is engaged in manufacturing within the state. Railroad and canal companies are taxed for both state and local purposes upon their real and personal property. Corporations using the public streets or highways pay a local tax on their property, which includes "privileges," and in addition are taxed on their gross receipts, as well as for local purposes.

Tendencies.—According to a recent analysis made by the Commissioner of Corporations (Washington) of the tax system of the New England, middle Atlantic and eastern central states, the earning tax applies to railroads in seven states; to express companies in nine states; to telegraph companies in eight states; and to telephone companies in eleven states; the capital stock tax applies to car companies in seven states and to manufacturing companies in nine states.

There is an increasing tendency away from local taxation of corporations, and in favor of state retention of corporate taxes. Thus Vermont, New York, Pennsylvania, Delaware and Michigan reserve for the state treasury all taxes paid by public service corporations, apart from local property locally taxed; and Maine, Vermont, Pennsylvania, Delaware, Maryland and Ohio retain the taxes paid by manufacturing companies. The result of this tendency is that corporation taxes constitute an increasing proportion of state revenue.

The percentage of total state taxes, derived from corporation taxes, in certain states, in the year 1909, is seen in the table which follows:

State	Per cent
Maine	57
New Hampshire	34
Vermont	86
Massachusetts	43
Rhode Island	45
Connecticut	80
New York	32
New Jersey	92
Pennsylvania	72
Delaware	62
Maryland	32
District of Columbia	16
Ohio	52
Indiana	19
Michigan	45
Wisconsin	71

Federal Tax.—In 1909, Congress levied a Federal tax on corporations engaged for profit, and on insurance companies; the rate authorized is one per cent upon the net income over and above $5,000. This tax is collected by the Bureau of Internal Revenue. In the fiscal year ending 1912, the receipts were $29,000,000.

See Franchises, Corporation, Legal Aspects of; Franchises, Corporation, Political Aspects of; Monopolies; Revenue, Public, Sources of; Taxation, Constitutional Basis of; Underwood Tariff.

References: Bureau of Corporations, *Taxation of Corporations*, Pt. I, New England, Pt. II, Middle Atlantic States, Pt. III, Eastern Central States (1909–1911), laws of states analyzed, financial details and bibliographies; C. J. Bullock, *Selected Readings in Public Finance* (1906), 350–372; E. R. A. Seligman, *Essays in Taxation* (1897), 136–264; M. H. Robinson, "The Federal Corporation Tax" in *Am. Econ. Review*, I (1911), 691–723; A. W. Machen, *Federal Corporation Tax Law* (1910).

Davis R. Dewey.

CORRECTION OF DELINQUENTS. See Delinquents, Correction of.

CORRESPONDENCE SCHOOLS. See Schools, Correspondence.

CORRUPTION, LEGISLATIVE

General Conditions.—Almost all forms of legislative corruption relate to bribery, although the consideration given for the votes of members or groups of members is not necessarily money. Charges of the direct purchase of votes and immediate payment have been all too frequent even in recent times, when conditions are generally recognized to be markedly better than they were forty years ago, but as a usual thing resort is made to subtler methods less easy to discover. Among these methods the most extensive and at the same time the most harmful is the purchase of support by patronage. This has been carried on through so long a period, is made so easy by the existing division of powers and is by its nature so secret and insidious as scarcely to attract public attention. Again, methods which in themselves are not harmful and, indeed, to a certain extent useful and legitimate, become in their extended use corrupt. Such methods are lobbying, the legislative caucus and certain well-known practices resorted to by unscrupulous parliamentarians for evading the rules which provide for legislation as the result of careful deliberation and debate.

That the general standing of American legislative bodies is lower in efficiency and integrity than it should be is generally recognized and easily explained through the small opportunities for achievement which are offered, the methods of election and the devotion of a greater part of the best brains of the country to other pursuits. A political career does not attract but rather, because of the low reputation of political life, repels most of those best

qualified by education and experience to take an active share in government. Their preference for business and the professions leaves the way open for others who recognize the opportunities for private gain in political positions, legislative as well as administrative. The close drawing of party lines, the system of district representation and the requirement, legal or customary, that the representative must reside in his district, all tend to lowering the calibre of men seeking legislative honors. Popular distrust of our legislative bodies is rife at the present day, and recent disclosures of corruption and control by outside influences go far to justify this distrust. It is clearly shown in the demand for direct legislation and the popular election of United States Senators, as well as in the support given to strong executives who take command of legislation, demand its enactment and in other ways encroach upon the time-honored independence of the legislative branch of government.

Congress.—Corruption in Congress in the form of payment of money for votes, while not unknown in the past and hinted at from time to time at the present day, has been of rare occurrence and in standing and integrity that body would rank well with the parliaments of other large nations. Some of its members, however, have been recognized as the attorneys or agents of large business interests. That legislation and the attitude of individual members are affected by the distribution of patronage is beyond dispute. The power of the Senate to confirm appointments and the system based on it, known as the "Courtesy of the Senate" (*see* SENATE OF THE UNITED STATES, COURTESY OF) are mainly responsible for this, while lesser appointments not covered by the civil service law are regarded as patronage (*see*) for the members of the House of Representatives belonging to the party in power. Patronage has been given or withheld to influence votes and even the President has made use of this lever to secure the passage of measures which he has advocated. While instances of this have come to light in the past, it has never been more frankly expressed than in the famous "Norton letter" of September, 1910, in which the secretary to President Taft acknowledged that the President had "felt it to be his duty to the party and to the country to withhold federal patronage from certain Senators and Congressmen who seemed to be in opposition to the administration's efforts to carry out the promises of the party platform."

State Legislatures.—Confidence in the integrity of state legislatures is at a low ebb. Their action is looked upon as largely controlled by the business interests and by political bosses. Their powers have been lessened by restrictions upon their sessions, by constitutional regulation of their procedure and by the enactment in a number of states of provisions for the referendum and initiative. Charges of direct bribery are frequent, particularly in connection with the election of United States Senators and the passage of legislation affecting large interests. It has been well recognized that the legislatures of certain states, notably New Hampshire, Connecticut, Pennsylvania and California, have been controlled through a long series of years by great railroad corporations. The insurance investigation in New York disclosed the payment of large sums to the legislative agents of the insurance companies and the recent investigation in the Senate of the United States of the method by which certain Senators secured their election have brought out facts showing a lavish use of money. In 1910 and 1911, the examination of legislative conditions in Illinois indicated the existence of a corruption fund, named, with ill-timed levity, the "jackpot." Convictions in the courts of members of state legislatures for bribery are not infrequent. In New York, in 1910, a senator, after a prolonged trial before the Senate which attracted wide-spread attention, was held to have received a bribe in connection with legislation affecting certain bridge interests and resigned.

Theodore Roosevelt (*see*), in an article on "Phases of State Legislation," gives the result of his analysis of the New York state legislature, of which he was a member. About one-third of the members were, in his opinion, corrupt or open to corrupt influences. The largest percentage of corrupt legislators came from the cities. Not only the integrity but also the ability of the country members whose course in the legislature is far more carefully followed than that of the city members, was markedly higher.

City Councils.—The standard of integrity in city councils is far lower even than in state legislatures. The calibre of membership has so far deteriorated that in a large proportion of the cities of the country these bodies are held in popular contempt and the tendency of legislation has been to deprive them of their powers and lodge them in executive officers, boards and commissions. Thus, the Board of Aldermen in New York City, which, in name is the legislature of the city, has gradually been deprived of its initiative in financial matters and all other powers of real magnitude, except the power to enact the building code. In 1905 because of alleged "hold up" tactics, its power over franchises was taken from it and lodged in the Board of Estimate and Apportionment. It is not necessary to go back to the "Forty Thieves Council" of the early fifties in New York or to the notable instances of legislative corruption in the city council in the period of the Tweed Ring (*see*) for instances of direct bribery. Shameful disclosures were made in St. Louis in 1902 in regard to the purchase of street railway franchises. Equally degrading were the cases of bribery in connection with bank deposits of city money

in Pittsburgh, while the long continued bribery of supervisors in San Francisco under the régime of Ruef and Schmitz have surpassed all that went before. In Chicago, prior to the redemption of the city council through the effective efforts of the Municipal Voters' League (*see*), of the sixty-eight members "not more than ten were suspected of being honest; the remaining fifty-eight were organized into a gang for blackmail and plunder."

Lobbying.—Various methods of legislative corruption have become so well-known as to receive specific and, frequently, highly picturesque names. "Lobbying" (*see* LOBBY) may be harmless and indeed a highly praiseworthy action, but it has been used in so large degree to gain corrupt ends that the term has earned an evil significance (*see* INFLUENCE). The lobby has been frequently referred to as the "third house." It takes its name from that part of the capitol in which most of the work is done. A "lobby" or body of persons representing interests seeking or affected by legislation is maintained in the capital city for the purpose of influencing the course of legislators. The object sought may be wholly in the public interest. For instance, the city of New York keeps a representative of the city law department in Albany throughout each session to care for the city's interest and represent the city before committees. Civic organizations and movements, such as woman suffrage, pursue a like course, to a greater or less degree. The lobby, however, has fallen into such bad odor through the corrupt action of paid legislative agents of private interests, corporations, railroads, insurance companies and the like, that steps have been taken in many states to limit its influence. At least seven states make the attempt to influence legislation improperly a felony, and many others make it punishable by fine or imprisonment. Again, rules are in force requiring all legislative agents to register at the state capitol, to state the matters in which they are interested and to file an account of all expenditures in connection therewith at the close of each session.

Strike Legislation and Other Methods.—"Strike" bills, or "regulators" which are introduced by legislators attack some interest for the purpose of being bought off. Behind them is frequently to be found a "combine" of members, usually bi-partisan, organized for purposes of plunder. A combine of this nature in New York earned for itself the expressive title of the "Black Horse Cavalry (*see*)." This body was particularly active in state legislation at the time when Boss Tweed was a state senator and practically in control of the legislature.

A number of the members of legislatures are "owned," that is, controlled by some outside interest. Usually this is a political leader or boss, to whom the member is indebted for his seat. In other cases a member is serving some particular interest to which he is bound by the fact that his campaign expenses have been paid or other substantial favors given him.

"Log rolling" (*see*) is almost inevitable in a large legislative body. It consists of the "swapping of votes," that is, an agreement between members to support each other's measures. It is not necessarily corrupt, except when it involves a sacrifice of principle. Members are prone to go to extreme lengths to secure the passage of legislation in which their constituents are interested and a favorite and effective weapon used by the party organization to hold their members in line is a threat if they prove independent to "attack their legislation."

The legislative caucus (*see* CAUCUS, LEGISLATIVE)—a meeting of all the members of one party in either or both houses for the purpose of deciding upon a party candidate for United States Senator, the distribution of legislative patronage or the attitude the party shall assume on important measures—is not in its essence corrupt, but becomes so when the attempt is made to bind a member against his conscience to vote for an unworthy candidate or to support corrupt measures which leaders have arbitrarily designated as "party bills."

The rules of legislative procedure are frequently so lax as to give ample opportunity for the passage of corrupt legislation without due consideration and often without knowledge by the majority of members as to its contents. This has become so well recognized that a certain course of procedure in regard to the reading of bills is even to be found in state constitutions (*see* BILLS, COURSE OF). Legislation "by unanimous consent" particularly in the closing days of the session, when many members are desirous of securing the passage of their own bills and therefore do not dare to enter a protest against the use of this privilege by other members, is prolific of abuse.

See CONGRESS; HOUSE OF REPRESENTATIVES; SENATE; SPOILS SYSTEM; STATE GOVERNMENTS; STATE LEGISLATURE.

References: A. B. Hart, *Actual Government* (1910); P. S. Reinsch, *Am. Legislatures and Legislative Methods* (1907), chs. viii, ix; C. A. Beard, *Readings in Am. Gov. and Polit.* (1911), ch. vii; T. Roosevelt, *Am. Ideals* (1897), ch. v; G. Meyer, *Hist. of Tammany Hall* (1901); R. Blankenburg, "Masters and Rulers of the Freemen of Pennsylvania" in *Arena*, XXXIII (1905); G. C. Sikes, "How Chicago is Winning Good Government" in National Municipal League, Providence Meeting, *Proceedings* (1907); J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, ch. lxvii.

ELLIOT H. GOODWIN.

CORRUPTION OF BLOOD. By the English law as it existed at the time of the separation of the colonies, an attainder rendered the person thus attainted incapable of inheriting or passing an inheritance to his heirs. Not

only are bills of attainder prohibited but it is specifically provided in the Federal Constitution with reference to punishment for treason that no attainder for that crime "shall work corruption of blood or forfeiture except during the life of the person attainted" (Art. III, Sec. iii, ¶2). See ATTAINDER, BILL OF; FINES AND FORFEITURES). E. McC.

CORRUPTION, POLITICAL. Corruption in its general effect upon the party system of the United States rather than in its particular manifestations will here be treated. Such misconduct as is revealed in specific exposures is rather symptomatic than essential, and can be used only as a means of ascertaining where the real fault lies. When parties began to rule in the United States little political corruption had appeared. Now, under party rule it is conspicuous and is so bound up with party machinery that party itself is held to be its cause. The machine is accused of deceiving and browbeating the voters, rendering public robbery safe and easy and in the name of democracy establishing a despotism. That there are grave grounds for such charges in many cities and in some states, no one can deny; but a sharp distinction should be made between corruption or specific abuses that have attached themselves to certain parts of the machinery and the natural workings of the system as a whole. Corruption is, after all, limited to certain portions of the party organization, and even here, because it is contrary to the ideal of party government, it tends to destroy itself. In spite of it, the parties have gone on fulfilling their true functions and even revealing that corruption that feeds upon them. The very thoroughness with which legitimate party efforts to expose iniquity have been carried on has led to over-emphasis of these evils. Political parties, as they naturally work, tend to exaggerate and give a distorted view of the wrongs and sins committed by their opponents, and thus center public interest on their own negative rather than their positive virtues.

Party Spirit and the Party.—One of the most serious criticisms on party government is that it tends to produce a prejudiced, partisan spirit; to make citizens blind to corrupt practices in their own party and abnormally credulous as to the evidences of corruption among the enemy. Political parties do arouse prejudice and a partisan spirit which are in themselves evils and a source of corruption; but parties did not originate these evils. Class interests and prejudice existed before parties. It is nearer the truth to say that party spirit evolved the party than that the party is the cause of party spirit. Moreover the party carries within itself the antidote for malicious partisanship. The basis of its open appeal must be the good of the state. If a party champions the cause of a certain class or of a certain portion of the country, it must show that the interest of this class or section is really that of the whole body politic. If a certain class or interest becomes allied with it, the party must prove that the benefits of that class or interest will not conflict with the best good of the whole people; otherwise the party is discredited and rejected. This necessity for becoming less narrow in order to succeed with the whole country makes the party a teacher of true patriotism. The party leader cannot, of course, repudiate party spirit, for that is essential to the cohesion of the organism; but he is compelled so to mold and guide party spirit as to identify it with the true interest of the state. Thus, between them, the two parties are leading the whole people toward a purer devotion to the common good. It is a flying goal, for each advance toward truer statesmanship reveals further progress to be attained.

Personal Gain.—But another tendency is shown at work in the party, a tendency to place individual gain before the interest of the community, or even of the party; to glorify the class or the sectional interest at the expense of the rest of the body politic. While this appeal is narrower, it is even more insistent than the other. It is the one that has fostered the growth of a machine within the legitimate organization of the party and that tends to nullify democratic government in America. Historically, the first prominence of this personal motive in politics began with Jacksonian Democracy (*see*) and the inauguration of the spoils system, but its most dangerous development has followed since the Civil War. Class and business interests, availing themselves of the excitement and prejudice that confused the public after the great national conflict, gained control of the party committees and through them manipulated conventions and the whole government. Thus a secret appeal to class interest and personal gain was substituted for the open call of patriotism and efficient government. Parties became divided into the outer honest, patriotic, general organization, calling upon the citizens to support it for the greater good of the entire country, and the inner, secret, selfish machine, manipulating the legitimate organs of party government for private or class ends. To this perverted control of necessary machinery were added the powerful tools of money and office. When such a machine is perfected both party organizations tend to come under its sway, so that the good qualities of the free party lie smothered under the weight of perverted party power.

Extent of Corruption.—Something of this sort has appeared in all of our great cities and to some extent in the states, although only a few states have been mastered by the corrupt machine. But never has the nation as a whole been brought under the sway of this secret manipulation of power, though enough has

been proved as to its extent and thoroughness to discredit party government in the United States. The very completeness and sordidness of such perverted party government, however, may be looked to for its undoing. The prominence of the evil is already leading the convinced believers in party government to seek to regain control of their organization and so to reassert the true function of the political party as a revealer of corruption, a promoter of reform, and a patriotic organizer of the government.

See Boss and Boss System; Bribery; California; Corrupt Practices Acts; Frauds, Electoral; Lobby; Machine, Political; Organization; Party Finance; Pennsylvania; Spoils System.

References: R. C. Brooks, *Corruption in Am. Pols. and Life* (1910); M. Ostrogorski, *Democracy and Party Organization* (1902), II, 347 *et seq.;* Jane Addams, *Democracy and Social Ethics* (1902); L. Steffens, *Shame of the Cities* (1904); H. J. Ford, "Municipal Corruption" in *Pol. Sci. Quart.* (1904), 673–686; H. J. Ford, *Rise and Growth of Am. Pol.* (1898), Pt. IV; F. J. Goodnow, *Pol. and Administration* (1900), chs. viii–ix; J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, ch. lxvii; E. L. Godkin, "Criminal Polties" in his *Problems of Modern Democracy* (1896), 123–156; C. L. Jones, *Readings on Parties and Elections* (1912), ch. ix; C. A. Beard and B. E. Shultz, *Documents on the Initiative, Referendum and Recall* (1912).

Jesse Macy.

CORRUPT PRACTICES ACTS

Aims of the Acts.—To supplement the common law against bribery and further to safeguard the ballot, laws aimed at preventing various irregular and criminal acts connected with political campaigns have been framed. These corrupt practices acts enumerate and define the various corrupt or illegal practices which are committed at elections and fix penalties for the same. Nearly all include as corrupt acts bribery in any form—treating, intimidation, personation, or aiding and abetting in the same, solicitation of candidates for campaign contributions—except by political committees—contributing campaign funds to other than authorized agents, making or receiving campaign contributions under an assumed name, etc. Many recent laws forbid contributions to campaign funds from certain sources, especially from corporations and from assessments on officeholders in the civil service. The financial powers of the committees are defined and limited. The expenditures of the candidates are regulated both as to objects and totals, and publicity is secured by requiring reports to be made after elections. The acts also provide for judicial procedure in case of violations and for penalties to be imposed.

English Act.—The first important law of this kind was passed by the British Parliament in 1883. It was called "The Corrupt and Illegal Practices Act." This act, the result of a series of investigations and attempted reforms, seeks in various ways to restrain improper conduct at elections. It first defines and fixes the penalty for the criminal offences classed as corrupt practices. These are bribery—of which seven kinds are specified in great detail—treating, undue influence and personation. All of these are punishable by fine or imprisonment and by loss of political rights for seven years. If it can be proved to the trial court that a member committed or consented to any corrupt practice, his election is void and he is forever incapable of representing the district in Parliament. And although the candidate may have been personally innocent, if his agent is proved guilty of corrupt action, his election is void and he may not be chosen by that district for seven years. The sections referring to illegal practices are intended to limit the expenses of election. Certain expenditures, only, are recognized as legal, such as those for printing, for meetings, etc., and only a limited number of paid agents is allowed. A maximum expenditure is fixed at £350 for boroughs of two thousand voters and at £650 for counties of the same number of voters with additional amounts for each extra thousand in a district. The candidate's agent must file a statement of expenses within thirty-five days after the election. This statement must be certified to by the candidate. It is important to notice that the candidate is not held responsible for the actions of party organizations or political clubs unless he has made them his agents. Election is an affair of the candidates in which the party does not share in the American way. Only in case of the wholesale corruption of a district in the interest of one candidate can the action of the party be brought home to him. In this case the election is void at common law. The difficulty of proving the agency of the party opens a door for corruption.

In the United States.—Corrupt practices acts of some sort appear on the statute books of all of the states and territories. The earlier laws usually refer to bribery, treating, the giving away of liquor and betting on the election. Forty states now (1912) have laws which attempt to regulate the use of funds by party committees and candidates. Legal and illegal expenditures are carefully defined and enumerated. Those classed as legal are usual-

ly the personal expenses of the candidate, the expenses of public meetings, postage, express, telephone and telegraph charges, advertising according to certain methods and the expenses of campaign headquarters. Along with limitation of expenditure has gone restriction as to both the sources and amounts of contributions. Responsible political agents must be appointed to handle funds and return sworn statements of expenditures to the proper officers. Recent laws also give more attention to expenses at primary elections, to prevention of fraudulent registration and voting and to forbidding employers of labor to control or influence the votes of their employees. General election laws are being rapidly extended to cover the primaries. Amid all the variety of detail the purpose of lessening the opportunities for the use of a large secret campaign fund is evident.

New York.—The first state to enact laws against corrupt practices at elections was New York, which passed a law in 1890 requiring candidates to file an itemized statement of expenses on penalty of imprisonment and loss of the office. As this statute left the committees unrestrained it was only partially successful. A later law remedies this defect and carefully defines a political committee as any combination "of three or more persons coöperating to aid or promote the success or defeat of a political party or principle or of any proposition submitted to vote at a public election or to aid or take part in the election or defeat of a candidate for public office." Every such committee must have a treasurer who shall within twenty days after the election file a complete statement of receipts including the names of all contributors with the amounts given; a statement of expenditures giving an itemized account of all sums over five dollars with the objects and the names of the persons to whom payment was made. Failure to file such a report or the filing of an incomplete or false report renders the candidate or committee liable to summary proceedings in the supreme court. The attorney general, a defeated candidate or any five voters may apply for such an order. "Bribery in elections is made a felony punishable by imprisonment not exceeding five years; giving a bribe also disqualifies for holding office, and receiving a bribe disfranchises for five years." The giving away of liquor within a specifid distance of the polling place while the polls are open is unlawful. Illegal registration, personation, using false naturalization papers or aiding another in so doing, are punishable by imprisonment in the penitentiary for not more than five years. Illegal voting in the primary or making a false declaration of party affiliation is a misdemeanor. Employers are forbidden to attempt to influence the votes of their employees and are compelled to allow them time to vote.

New York had also, in 1909, done as much as any state in prohibiting corporations, except political associations, from contributing to campaign funds or for any political purposes whatsoever. Any officer, stockholder or agent of a corporation who is guilty of contributing corporation funds is subject to imprisonment for one year and a fine of not more than $1,000. This system of publicity of campaign funds is completed by a careful list of the amounts which may be legally spent by candidates for various offices and also by a list of the legitimate expenses that may be incurred. The law of 1906 includes the renting of halls and the natural expenses of a public meeting, including the expense of advertising the same, payment of agents to prepare articles and advertisements for the press, payment of newspapers for advertising and additional circulation, rent of offices and club rooms, compensation of clerks and others to conduct the "reasonable business of elections," travelling expenses of workers and personal expenses of the candidate and the hiring of a limited number of carriages for conveying electors to the polls. "No campaign funds may be solicited from candidates and no judicial candidates may make contributions."

Massachusetts.—Massachusetts passed the first law forbidding the promising of any employment or office in order to influence a voter. Certain corporations are forbidden to make political contributions to the parties. Candidates and committees are required to file sworn statements of expenses, and payments by candidates are limited to contributions to political committees and personal expenses which are specified. Statements made by committees and others handling funds must give receipts, expenditures, disbursements and outstanding obligations. If the accounts of any committee do not exceed twenty dollars that fact shall be certified. Committees are forbidden to pay naturalization fees. Penalty for violation of the law is a fine not to exceed $1,000 or imprisonment not to exceed one year. The publication of unsigned political advertisements and the payment of newspapers to induce them to favor a particular candidate is forbidden (1907). In 1908 political committees were forbidden to solicit money from a candidate as a prerequisite to giving him nomination papers. Committees may employ not more than six persons in a ward or voting precinct.

Other States.—Oregon has passed a bill limiting the amount to be spent in an election and defining corrupt uses of money. The state relieves the parties of some legitimate fields for expenditure by bearing part of the expenses of informing the voter about candidates and parties. All electioneering on election day is forbidden (1908). This plan has been copied by some other states. Colorado, in 1909, passed a law declaring that the expenses of conducting campaigns to elect state, district and county officers at general elections shall be paid only by the state and the candidates. The state

contributes to each political party twenty-five cents for every vote cast for governor by that party in the last preceding election. The money is paid to the state chairman who is put under bonds to guarantee the expenditure of the state's money for legitimate campaign expenses and to vouch for the distribution of one-half the sum to the county chairmen. The candidates may personally contribute an amount regulated by the size of the prospective salary or fees. It is made a felony for any other person or corporation to contribute to any party committee or candidate, or for any one to receive such a contribution. The total amount is intended to furnish sufficient funds for an economical campaign, without allowing money for bribery or the payment of a large number of workers.

Since most of the election machinery is in the hands of the states the Federal Government has legislated less than the states. In 1907 Congress passed a law forbidding corporations to make contributions for campaign funds in federal elections, and in 1910 it added a Publicity Act which was amended in 1911 to apply to candidates for Congress as well as to committees. A maximum expenditure of $10,000 for senatorial candidates and $5,000 for congressional candidates was fixed by this act.

See Bribery; Frauds, Electoral; Party Finance; Party, Place and Significance of; Publicity of Political Expenditures.

References: M. A. Schaffner, *Corrupt Practices at Elections* (1906); Wisconsin Free Library Commission, *Comparative Legislation Bulletin*, No. 3 (1907); S. G. Lowrie, in *ibid*, No. 23 (1911); R. H. Fuller, *Government by the People* (1908), chs. viii, ix; L. E. Aylsworth, "Corrupt Practices" and "Campaign Expenditures" in *Am. Pol. Sci. Review*, III, (1909), 50–56, 382; R. C. Brooks, *Corruption in Am. Pol. Life* (1910), 268–274; F. J. Stimson, *Popular Lawmaking* (1910), 268; *World Almanac, 1908, 1909; New York Year Book of Legislation, 1907, 1908;* A. L. Lowell, *Government of England* (1908), ch. x; P. S. Reinsch, *Readings on Am. State Gov.* (1911), 103–106; G. L. Fox, "Corrupt Practices and Election Laws in U. S. since 1890" in Am. Pol. Sci. Asso., *Proceedings*, II (1905), 171–186.

Jesse Macy.

COST, ECONOMIC. (1) The personal sacrifices involved in the production of goods and services, including the pains and privations of the laborer, and the postponement of consumption, or "abstinence," of the capitalist. (2) The using up, in the process of production, of things of value, including goods, the uses of permanent goods, and human services. (3) The money outlays incidental to production of goods.

Of these conceptions the first (sometimes designated as "real" or "subjective" cost) was generally employed by the classical economists, and is still widely used in economics. The second conception is the one commonly employed by the marginal utility school. It is sometimes designated as "opportunity" cost, since the measure of cost involved in using up a good or service is its worth in connection with some alternative opportunity. The third conception, designated as money or entrepreneur's cost, is practically that employed by business men. Although it is often used in economic writings, this conception is usually regarded as being inadequate for scientific purposes.

The difference in the three conceptions may be illustrated by the treatment given to labor. According to (1) labor as a cost is measured by the "pain" it involves. According to (2) labor as a cost is measured by its general efficiency. According to (3) the measure of the cost is the wages paid. The use of land is a cost, according to the second conception; the rent paid for its use is a cost according to the third; no cost is connected with land, according to the first.

The significance of cost in economics appears in connection with the theory of normal values. Adam Smith argued that in primitive conditions goods must have exchanged in proportion to labor (viewed as subjective cost). Ricardo attempted to prove that the proposition remained practically true of developed societies, provided that attention be fixed upon that part of the supply of each commodity produced at greatest cost ("marginal cost") and that allowance be made for differences in magnitude and character of capitals employed in production. Senior's analysis brought to light a subjective cost connected with the saving of capital (abstinence) to be placed alongside of labor as part of the cost of production. It remained true that marginal labor-abstinence cost was an inadequate explanation of exchange relations, particularly in the case of commodities produced in different countries, or in the same country under widely differing circumstances. In later theory subjective cost is employed chiefly as an explanation of the limitation of the services of labor and the accumulation of capital.

In the theory of the marginal utility school, the conception of cost plays a subordinate part. Normal values are described as proportionate to cost; but this means merely that every cost factor susceptible of more than one use tends to be so distributed among the several uses as to produce an equal value in each.

See Distribution, Economic; Rent, Theory of; Value.

References: J. S. Mill, *Principles of Pol. Economy* (1849), III, chs. iii, iv; F. A. Fetter, *Principles of Economics* (1905), ch. xxx; F. Wieser, *Natural Value* (1893), V; J. Davenport, *Value and Distribution* (1908), chs. i-vii.

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COST OF GOVERNMENT IN THE UNITED STATES

The cost of government depends upon the functions which it exercises and the activities which it undertakes for the benefit of its citizens. There is no ideal standard to which the activity of government should be made to conform. Whether government undertakes to exercise broad or narrow functions, to do many or few things, depends upon the historical growth of a nation and the contemporary needs of society which is organized into a form of government.

Classification of Functions.—Writers on political science classify these functions under various headings. John Stuart Mill distinguishes between (1) necessary, and (2) optional functions; Roscher between (1) necessary, (2) useful, and (3) superfluous functions. An objection to such classification is that they involve a judgment as to the proper province of government; and when these distinctions are carried over into the field of finance they imply that certain expenditures are to be regarded as necessary, and others as optional or superfluous. Only the people who organize a government can determine the relative importance to themselves of a given function. What one society may regard as optional or superfluous, another society may consider as necessary.

A better classification is given by Henry C. Adams, who distinguishes between protective, commercial and developmental functions of government. (1) Under protective functions are consequently assigned expenditures for the military, for police, and for protection against social diseases, as crime and pauperism. (2) Under commercial functions fall activities for rendering services which will be of direct and immediate advantage, and here are placed expenditures for the postal, railway, telegraph, lighting and water undertakings. These commercial functions may further be grouped into three sub-classes—industries, investments, and special services. Under industries, we have what in England is known as municipal trade; under investments are sinking, investment and trust funds; and under special services are the opening of highways or sprinkling of streets, the cost of which is met by special assessments. (3) Under developmental functions are activities "such as spring from a desire on the part of society to attain higher forms of social life." Such are expenditures for education and recreation, for "maintaining equitable conditions for the preservation of private business," as in the supervision of industry; for investigation, whereby society may better measure its resources and wisely determine its opportunities and future policy; and for public works for the development of the physical basis of the state, such as forestry, irrigation and lighthouses. From a financial point of view the commercial functions and the expenditures which result from such activity may be disregarded in so far as it is the policy of government to make such service self-supporting (*see* EXPENDITURES, FEDERAL; EXPENDITURES, STATE AND LOCAL).

Growing Cost of National Government.—There has been an enormous increase in cost of government during the past generation, which has excited much comment if not adverse criticism. Undoubtedly in such rapid delevopment of governmental undertakings there has been waste if not extravagance. On the other hand the per capita ratio ordinarily used as a basis of comparison is open to objections. Consideration should be given to the territorial growth of the nation, and to the demands made upon the Government. The range of administrative activity has widened, thus making the expenditures in 1904, a year of peace, as heavy as in 1898, a year of war. There is a growing conviction that externally this country has a larger part to play in world politics; and internally the Federal Government must undertake functions which formerly it was thought the states could satisfactorily exercise. Such opinion is voiced in the statement of former Speaker Reed: "This is a billion dollar country"; and more recently in Theodore Roosevelt's letter of acceptance in 1904:

> The expenditures of the nation have been managed in a spirit of economy as far removed from waste as from niggardliness. Do our opponents grudge the fifty millions paid for the Panama Canal? Do they intend to cut down on the pensions to the veterans of the Civil War? Do they intend to put a stop to the irrigation policy? Or to the permanent census bureau? Or to immigration inspection? Do they intend to abolish rural free delivery? Do they intend to cut down the navy? Or the Alaskan telegraph system? Do they intend to dismantle our coast fortifications? If there is to be a real and substantial cutting down in national expenditures it must be in such matters as these.

The tendencies found in the United States are true of all the leading countries of the world. The cost of national government has been shifted from war itself to preparation against war. The annual expenditures of the four principal nations, England, France, Germany, and the United States on account of preparation against war are greater than of any one of these nations during any foreign war in which it has ever been engaged.

Relation to Wealth.—Another test of the wisdom of expenditure is by a comparison with the wealth of the country, as shown in the following table which appears to establish that the wealth of the country increased 36 per cent from 1890 to 1904; and the per capita

expenditure of the Federal Government increased by 39 per cent:

	Per Capita Expenditures	Per Capita Wealth
1860	$2.01	$ 514
1880	5.28	850
1890	4.75	1039
1895	5.16	1117
1900	6.39	1165
1904	6.50	1310

Again, the higher level of prices of commodities is partly responsible for the higher level of expenditures. The Government, as well as private employers, must pay more in money for its supplies and also for its labor as seen in the advancing salaries.

Further analysis shows that by far the largest increase in expenditures has been due to the War and Navy Departments. Comparing the expenditures in 1897 and 1907 by the conventional groupings of the *Finance Report* and reducing them to a per capita basis the following results are obtained:

	1897	1907	Increase	Decrease
War Department	$0.73	$1.43	$0.70	
Navy Department	.44	1.14	.70	
Pensions	2.01	1.63		$0.38
Indians	.16	.18	.02	
Interest on debt	.47	.29		.18
Miscellaneous	1.32	2.11	.79	
	$5.13	$6.78		

Question of Federal Extravagance.—As to whether the Government is extravagant in its expenditures, three points must be considered: (1) Is the service for which the outlay is made rendered at the least reasonable cost? (2) Does the expenditure properly belong to the Federal Government? (3) Do existing conditions justify the expenditure? The answer to the second question depends upon the interpretation given to the constitutional powers of the Federal Government and of the states respectively.

A part of the so-called extravagance of the Federal Government is due to extension of its sphere of administration. Consider, for example, the development of the promotion of agriculture by the Department of Agriculture whose cost has increased from $3,625,000 in 1900 to $16,976,000 in 1910. In the earlier year the *Finance Report* noted under the expenditures of this department but two items "salaries and expenses" and the "Weather Bureau." In the latter year there are ten items representing, among others; payments for meat inspection; forest service; investigation of cotton boll weevil; and agricultural experiment stations. The work of the Forest Service alone, practically untouched in 1900, cost nearly $3,000,000 in 1910. Supervision and regulaion have imposed new costs; the expense of maintaining the Interstate Commerce Commission has increased from $243,000 to $1,157,000, and for the regulation of immigration from $290,000 to $2,325,000.

The question whether the national expenditure is justified is complicated by the large revenue which the Government enjoys and which on independent grounds of social and economic policy there is no disposition to reduce. In most countries revenues are adjusted to expenditures; in the United States the reverse is frequently the rule. Generous revenue invites expenditure; when there is a surplus congressmen urge expenditures to promote some local interest or improvement. Devotion to the protective system, with its high rates of customs duties, is a more frequent justification; it is easier to spend revenue than to reduce taxes.

As to whether there is waste in expenditure, granting the propriety or justification of the object for which the outlay is made, the answer is by no means clear. The operations of the National Government are extensive and in some departments complicated, covering a wide area. Moreover, these operations are dependent upon annual appropriations of Congress and are subject to changes in officials which leads in turn to changes in policies. For the consequent defects we may reasonably hold responsible the theory upon which our system of government is founded; American administration lacks that stability of management which characterizes private business.

There is, however, much exaggeration in regard to existing extravagance in government administration. To save large sums would require a radical change in public opinion as to the proper objects of appropriation. Interest on the public debt, pensions, and the conduct of the ordinary operations of government absorb a large share of the expenditures. Small savings can be made in individual items of expenditure, but the percentage to total cost will not be large.

Cost of Local Government.—It is in the sphere of local administration that the cost of government excites the most interest. The range of a city's activity extends over a wide area. It maintains public safety by a police force; contributes to the maintenance of armories; protects property against fire; promotes healthy conditions of living by supervising disease; it supports hospitals; regulates the disposal of refuse; provides cemeteries for the dead; furnishes parks and playgrounds for recreation; maintains courts for the administration of justice; cares for defectives and dependents; maintains roads, docks, wharves, ferries; provides water; and supports schools, public libraries, and museums. Many other functions might be enumerated; and to undertake all this work necessarily requires means, and measures the cost of government (*see* Expenditures, State and Local). Some of these functions have only recently been recognized,

and it is highly probable that new ones will be accepted in the future. Government is no longer regarded as an evil, but as an agency for positive good. And yet payments for this cost are frequently made grudgingly, as were payments at an earlier period for a governmental service which was largely confined to protective functions.

The recent development of municipal functions since 1870, well summarized by Fairlie in 1901, shows that almost all cities now depend on paid companies for fire protection; street paving has become recognized as a necessity not only for business sections, but also for residence localities, and highway construction often demands huge steel and masonry viaducts; public education has been reorganized; poor relief has been classified and special institutions created; extensive parks are general in all important cities; and street lighting is done by electricity.

Per Capita Cost.—The per capita cost of local government is difficult to determine, because of the number of governmental agencies. In some states, the state government undertakes administrative functions of a strictly local character. In Pennsylvania the county bears the chief expenses of charities and corrections, and in some of the southern states the county also meets the cost of education. Comparisons, therefore, between cities in different states must be made with caution. Moreover, differences in the character of a city's population and its industries necessitate different levels of expenditure. According to the analysis made by the Bureau of the Census, the per capita cost of local government in 1910 was greatest in New York, $50.35. Of the cities with population over 300,000, Detroit had the lowest cost, $23.39. In the group of cities with population 100,000 to 300,000, the maximum and minimum costs were for Seattle, Wash., $65.96, and for Scranton, Pa., $15.23. For cities with population 50,000 to 100,000, the range was from $57.02 for Tacoma, Wash. to $9.08 for Johnstown, Pa.; for cities with population, 30,000 to 50,000, the extremes were $59.83 for Atlantic City, N. J., and $8.06 for Huntington, W. Va.

Total Cost of Government.—According to the latest (1902) compilation by the Bureau of the Census of expenditures of all units of government in the United States, Federal, state, and local, the total cost of government was approximately $1,773,977,000 or $22.39 per capita. This is distributed as follows:

	Total	Per Capita
National government	$617,530,000	$ 7.79
State government	185,764,000	2.34
Local government	970,683,000	12.25

If the members in a family be estimated at five, the family contribution toward the total cost of government is an average of $111.95, no inconsiderable part of the income of the average family.

See Appropriations, American System of; Assessed Valuations, Comparative; Budgets, Federal; Budgets, State and Local; Expenditures, Federal; Expenditures, State and Local; Financial Statistics; Frauds on the Treasury; Public Accounts; Purchase of Public Supplies and Property; Revenue, Public, Collection of.

References: H. C. Adams, *Science of Finance* (1898), 55–103; J. A. Fairlie, *Municipal Administration* (1901), 72–102; C. C. Plehn, *Introduction to Public Finance* (3d ed., 1909), 39–78; H. J. Ford, *Cost of our National Government* (1910); W. M. Daniels, *Elements of Public Finance* (1899), 34–53; U. S. Census Office, *Wealth, Debt, and Taxation* (1907), Pt. IV; *Statistics of Cities, 1910* (1913); R. H. Hess, "Cost of Government in Minnesota" in Minnesota Tax Commission, *Second Biennial Report*, 1910.

Davis R. Dewey.

COST OF LIVING. A phrase which crept into political discussions after about 1900 and was brought to a crisis from 1909 to 1912 by the sharp rise in the money cost of many staples. The precise reasons for the undoubted increase are hard to establish. (1) Opponents of the high protection insisted that the high cost of living was due to the tariff, and particularly to the Payne-Aldrich tariff of 1909. (2) A counter theory was that it was wholly due to an enormous output of gold, which caused a corresponding higher range of prices, so as to measure the amount of specie in circulation. (3) Others held that it was due to a great improvement of the scale of living throughout the world, and particularly in the United States; some going so far as to lay the burden upon the prodigious expenditure for automobiles. (4) A very plausible reason was the growing expenditures of the world for armaments. (5) Another cause which has much agitated the public was the concentration of industries and the monopoly of some commodities by trusts. The trust and tariff argument together brought the cost of living into political platforms and campaigns; and it was an active factor in the presidential campaign of 1912. See Competition; Cost, Economic; Free Trade; Prices and Charges; Progressive Party. **References:** U. S. Bureau of Labor, "Cost of Living and Retail Prices of Food" in *18th Annual Report*, 1904; R. C. Chapin, *Standard of Living in N. Y. City* (1909).

A. B. H.

COSTA RICA. Costa Rica, originally part of the captain-generalcy of Guatemala, later of the viceroyalty of New Spain, declared (with Central America, see) independence from Spain in 1821, and withdrew from that federation in 1829. January 21, 1847, it proclaimed its constitution. The republic lies between lati-

tude 8° and 11° 16′ north; longitude 81° 35′ and 85° 40′ west (Greenwich), with an area of 23,000 square miles, and a population of 368,780, about sixteen per square mile. The present constitution (December 7, 1871) provides for a unicameral legislature, called chamber of deputies (*Camara de Diputados*). One deputy for each 8,000 inhabitants is elected by indirect vote, for a term of four years, the *Camara* being renewed by halves every two years. A permanent committee of five deputies represents congress during recess, regular sessions being held annually. A president is elected by an electoral college for four years. There is no vice-president, *designados* being appointed by congress to represent the president when necessary. The Cabinet consists of the secretaries of foreign affairs, justice and public instruction of government and police; of treasury, commerce and promotion; of war and marine. The judicial system is composed of a national supreme court, five justices chosen by congress, and lower courts. The republic is divided into five provinces and two *comarcas*. The capital is San José. State religion is Roman Catholic. **References:** J. I. Rodriguez, *Am. Constitutions* (1905), I, 325–377; Pan American Union, *Bulletin*. A. H.

COUNCIL, GOVERNOR'S. The governor's council is now rather of historical significance than of present day governing powers. It played an important part in colonial times, and continued later as a check on the executive. The councils were selected in a few of the states by election, and in others by the state legislatures. A council, or council of state, or privy council was provided for in the early constitutions of New York, South Carolina, Virginia, Maryland, and Delaware. By the time of the Civil War, these states had abandoned the system. In Maine, a council of seven is chosen by the legislature. In Massachusetts, a council of eight is elected from districts. In New Hampshire, five councillors are elected. In North Carolina, the secretary of state, auditor, treasurer, and superintendent of public instruction constitute an advisory council to the governor.

Many acts of the executive were formerly subject to the consent of the council; but the range is now more limited. In Maine, the council advises the governor, keeps a record of its acts, the members have the same privileges that are accorded to members of the legislature, and advise and consent in the governor's appointments. In Massachusetts the council has greater executive powers, especially in case of death or removal of both the governor and lieutenant governor. Vacancies in the council are filled by the general court. In New Hampshire, the members of the council are liable to impeachment.

See EXECUTIVE AND EXECUTIVE REFORM; GOVERNOR; STATE EXECUTIVE.

References: A. B. Hart, *Actual Government* (1908), 143; J. H. Finley and J. F. Sanderson, *American Executive* (1908), 19; F. N. Thorpe, *Federal and State Constitutions* (1909); E. B. Greene, *Provincial America* (1907), ch. v.

THOMAS N. HOOVER.

COUNCIL, MUNICIPAL. The municipal council is the legislative body of the city; and so far as cities now retain any legislative powers, the council exercises them just as Congress does for the United States and the legislatures for the several states. The city charters granted in colonial days made provision for a council consisting of a mayor, aldermen, and concilmen, but constituting one body. The bicameral council was introduced in Philadelphia and Baltimore during the closing years of the 18th century and this system was adopted by a number of cities during the first half of the 19th century. At one time or another, most of the large cities have had bicameral councils, but the tendency in recent years has been to return to the unicameral council, as in Boston and Pittsburgh; while Philadelphia, St. Louis and Baltimore still retain the bicameral system. The single chamber is universal in Europe.

There is no uniformity in the membership of the councils nor is there any definite relation between the size of the council and the population of the city. Philadelphia, with 125 members in its two chambers, has by far the largest membership of any of the large cities; Boston and Pittsburg, with only nine councilmen, have the smallest, unless account be taken of the cities under the commission plan of government. In the latter, the usual number is five, but these exercise administrative as well as legislative powers. As a general rule, the councils are smaller than in European cities. The council of Newport, R. I., is unusual among American cities, in that it contains 195 members (*see* NEWPORT PLAN).

The term of service of councilmen varies from one to four years, with two years in most cases. The members are almost universally elected by wards or districts, except in commission governed cities. In bicameral councils, the members of the smaller body are generally chosen from larger districts or by the city at large.

The former practice of serving in the council without compensation has been abandoned in nearly all the large cities and in a majority of the smaller ones. The council meets once a week as a general rule. In a few cities the mayor still presides over the council, but there is usually a president chosen either by the council or elected as a councilman for the whole city. In a number of cases, a property qualification is required for membership in the council but this is not so general as in Europe.

The state legislature now exercises nearly all the legislative powers which formerly be-

longed to the council, the council only retaining power to pass certain police ordinances, etc., with a few exceptions, notably in Chicago, where the council has very broad powers.

See Alderman; Chicago; City Records; Commission System of City Government; Legislation and Legislative Problems; Municipal Government in the United States, Organization of; Newport Plan; Ordinances, Municipal.

References: J. A. Fairlie in Pol. Sci. Quar., XIX (June, 1904), 234–252, *Essays in Municipal Administration* (1908); 125–143; F. J. Goodnow, *City Government in the U. S.* (1904), 137–175. Horace E. Flack.

COUNCIL OF APPOINTMENT. Councils of appointment are found in but few states. They consist of a small number of men, either members of the executive department, or selected by the legislature. The New York council of appointment which was provided for in the constitution of 1777 was a source of political intrigue and corruption and therefore was abolished in 1821. In most cases, these councils have only concurrent power with the governor to make appointments, the boards having the power more frequently found in the state senates, *viz.*, to give advice and consent on the nominations from the governor. In Alabama, the governor, auditor and commissioner of agriculture and industries constitute a board of appointment for county boards of registration. See Council, Governor's. References: C. A. Beard, *Am. Gov. and Politics* (1910), 88; N. Y. State Council of Appointments, *Military Records, 1723–1821* (1901); Hugh Hastings (N. Y. State Historian), "Annual Report" in *ibid*; A B. Hart, *Actual Government* (1908), 147; F. N. Thorpe, *Fed. and State Constitutions* (1909); F. D. Turner, *Rise of The New West* (1906), 41. T. N. H.

COUNCIL OF REVISION. A council of revision was provided for in the New York constitution of 1777. It was composed of the governor, the chancellor, and all or any two members of the supreme court. All bills were to go from the senate and assembly to this council; and a majority of the members of the council had power to act. If a bill was disapproved, it must be returned to the house in which it originated, along with the objections of the council; a two-thirds vote in each house would then enact it. The council had ten days in which to act; and a pocket veto was impossible, for if an adjournment prevented the return of a bill, it must be returned at the next meeting of the legislative body. Out of one hundred and twenty-eight bills vetoed by the council, seventeen were passed over the veto. There was no provision for a council of revision in the revised constitution of 1821. See Council, Governor's; Veto Power. References: Constitutions of New York, 1777, 1821. F. N. Thorpe, *Federal and State Constitutions* (1909). T. N. H.

COUNSEL, RIGHT TO. The Sixth Amendment to the Constitution of the United States and the bills of rights of various state constitutions guarantee the right of an accused person to have "assistance of counsel for his defence." At the common law a prisoner was not allowed counsel. In England this right was not granted in all cases before 1836. See Trial. Reference: T. M. Cooley, *Constitutional Limitations* (6th ed., 1890), 403 *et seq.* A. C. McL.

COUNTED OUT. A term indicating that species of election fraud by which, through juggling with the ballots or by manipulating figures, the candidate actually receiving the largest vote is declared defeated. O. C. H.

COUNTERFEITING. The crime of counterfeiting consists, in general, of the making of false or spurious coin or paper money, or instruments intended to pass current as money in the similitude of the genuine; and so far as it constitutes a species of fraud it is punishable under the laws of the states, as is also the offense of uttering such coin or other money with intent to defraud. By the Federal Constitution Congress is given authority "To provide for the punishment of counterfeiting the securities and current coin of the United States" (Art. I, Sec. viii, ¶ 6); but this does not preclude the punishment of such offenses under the laws of a state. Under its general power to coin money and regulate the currency (Art. I, Sec. viii, ¶ 5) Congress has the implied power to provide for the punishment of the uttering or circulation of counterfeit money; and as incident to the power to define and punish offenses against the law of nations and to regulate commerce with foreign nations, it may provide for the punishment of the counterfeiting of foreign coin and the bringing of counterfeit money into the United States. Under various implied powers Congress has provided for the punishment of the false making or counterfeiting of securities, certificates, stamps and other instruments authorized in the transaction of its public business. F. McC.

COUNTERVAILING LEGISLATION. A system of restriction upon British trade from 1815 to 1830 intended to meet the restrictions of the British Navigation Acts. It consisted of: (1) levying discriminating duties upon British vessels, or goods imported in British vessels; (2) discriminating against the trade from British colonies with which American vessels were not allowed to trade direct. The struggle lasted nearly twenty years, and President Jackson was finally successful in securing the demands of the United States so that the

countervailing legislation could be withdrawn This victory was due quite as much to the change of feeling in Great Britain, which resulted, in 1849, in the repeal of the Navigation Acts altogether, as from the insistence of the United States. See GREAT BRITAIN, DIPLOMATIC RELATIONS WITH; NAVIGATION ACTS; SHIPPING, REGULATION OF. Reference: J. B. Moore, *Digest of Int. Law* (1906). A. B. H.

COUNTING IN THE ALTERNATIVE. This term applies to a method by which when the question is raised of the right of a particular state to participate in a presidental election, the result is stated as it would be with and without the doubtful vote. There have been five instances of this practice as follows: (1) In 1820, Missouri chose presidential electors, but the state was not formally admitted into the Union till after the formal count in February, 1821. The Vice-President, therefore, announced that the number of electoral votes for James Monroe was 231; if Missouri were not counted, 228. (2) In 1837, Van Buren received 170 votes with Michigan, or 167 without. (3) In 1856, Wisconsin chose electors on the wrong day, leaving it uncertain whether the vote should or should not be counted. (4) In 1869, the vote of Georgia was questioned because the state had, in the judgment of Congress, not fulfilled the statutory requirements for reconstruction. The vote was, therefore, declared to be 214 for Grant, excluding the 9 votes for Georgia. (5) In 1880, the electors were chosen by Georgia on the wrong day, and consequently the vote for Hancock was announced as 155 with Georgia included, and 144 if not included. In none of these cases did the elections turn upon the disputed votes. In the contested election, 1876–77, where there were double sets of reports, Congress by the special electoral commission (*see*) gave to that commission the decision as to what votes should or should not be included. See ELECTORAL COMMISSION; ELECTORAL COUNT FOR PRESIDENT. References: E. Stanwood, *Hist. of the Presidency* (1898), *passim;* J. H. Dougherty, *Electoral System of the U. S.* (1906), *passim;* T. H. Benton, *Abridgement of Debates*, VI, 121, 215, 231. A. B. H.

COUNTRY LIFE, COMMISSION ON. For the purpose of ascertaining the condition of country life in the United States and of enabling him to make suitable recommendations to Congress for the correction of such deficiencies as are correctable by legislation, President Roosevelt, August 10, 1908, appointed a Commission on Country Life, consisting of five members and subsequently increased to seven, as follows: L. H. Bailey, Henry Wallace, Kenyon L. Butterfield, Walter H. Page, Gifford Pinchot, C. S. Barrett, W. A. Beard. The commission held hearings across the country late in 1908, distributed circular enquiries, engaged in correspondence, and stimulated discussion in meetings and in the press; and it presented its opinions in a report to the President under date of January 23, 1909. The commission made no investigation of technical agriculture, but confined itself to the human side of rural life, as expressed in economic, social, educational, sanitary and moral conditions. It recommended about twenty concrete lines of action looking toward the correction of the deficiencies of country conditions, emphasizing particularly the need of rural surveys, nationalized extension work of an educational nature, and a campaign for rural progress. See AGRICULTURE, RELATIONS OF GOVERNMENT TO; COMMISSIONS IN AMERICAN GOVERNMENT; EDUCATION, AGRICULTURAL. Reference: Commission on Country Life, Report in *Sen. Docs.*, 60 Cong., 2 Sess., No. 705 (1909), separately published, 1910. L. H. B.

COUNTY AND CITY GOVERNMENT, CONCURRENT. The existence of the county and city as independent corporate entities having jurisdiction over the same territory is a conspicuous obstacle to efficient municipal government. It leads in most cases to expensive duplication of offices, conflicting jurisdiction, decentralized power and responsibility, inadequate supervision, reckless administration of finances, and a vicious dominance of county politics in city affairs. Such evils are being eradicated by: (1) partial or complete consolidation of county and city governments, for example, in New York City, Boston, and San Francisco; (2) absolute separation between city and county, as in St. Louis.

The governments of New York City and her four metropolitan counties have been, since 1897, consolidated almost as completely as the New York constitution permits. This was accomplished by vesting in city officials such county functions as: power relative to public works and county property; authorizing the annual county budget; assessing, levying and collecting state and county taxes; borrowing money on the county's security; auditing and controlling county expenditures; and the ordinance making power.

The important governmental functions exercised generally by the Massachusetts counties are, in Suffolk County, vested in the city of Boston. City officials exercise the chief county functions, for example, the annual budget for the county as for the city is authorized by the mayor and city council. The auditor and treasurer of Boston act as auditor and treasurer for Suffolk County. Metropolitan Boston, however, extending over thirty-nine different municipalities and portions of five counties has no unified government.

San Francisco city and county have been "consolidated" since 1856. They form a body politic consisting of a coterminous city and county with a unified government composed

partly of city and partly of county officials. In effect the city exercises the county functions and maintains certain required county officers whose compensation and manner of selection is determined by the city.

St. Louis, since 1876, has effected complete separation of city and county. Within the municipal boundaries there is but one local governing corporation—that of the city.

Chicago, among the large cities, is a notable example of the lack of unification of city and county governments. Cook County officials assess, levy, collect and distribute taxes, administer justice and local charities, and supervise elections alongside similar officials of the city of Chicago.

See City and State; County Government; Towns and Townships.

References: Papers on City and County Government in Am. Pol. Sci. Assoc., *Proceedings*, 1911, *Am. Pol. Sci. Rev.*, VI (1912), No. 1, *Supplement;* D. F. Wilcox, *Great American Cities* (1910), "County Government" in Am. Acad. of Pol. and Soc. Sci., *Annals*, XLVII (May, 1913). O. C. Hormell.

COUNTY ASSESSOR. In most of the southern and far western states property is valued for taxation by county assessors. In most states where the original assessment is by town officers, county officers assist in the work and review and equalize such assessments.

County assessors are usually elected by popular vote for terms of two or four years. They prepare a list of persons and a description and valuation of property subject to taxation. Real estate tends to be assessed against the property rather than against the owner (*see* Assessed Valuations, Comparative). In many states tax payers are called on to submit itemized lists of various classes of personal property.

In Indiana and Wisconsin there is a county officer to supervise and instruct the town assessors; and in Ohio and Illinois one of the other county officers has similar duties. The tendency of recent legislation is to increase the county supervision over town assessments and to establish a more active state supervision over local assessors. In Kansas, town assessors have been abolished, and the original assessment is now made by county assessors.

See Assessment of Taxes; County Government; Finance, Local Systems of.

References: J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906), 119–122. J. A. F.

COUNTY CLERK. In most of the American states there is an officer in each county who acts at the same time as clerk of the county courts and as secretary of the county board; and often performs other administrative duties. In about half of the states the title of county clerk is used, in a few of which this officer does not act as court clerk. In the other states, the title indicates primarily the duties as court clerk, and in some cases only such duties are assigned to this officer. In several states, there are separate offices of county clerk and court clerk for every county; and in some other states both offices are provided in the larger counties. County clerks keep the record of proceedings of the county boards, and often act as accountants or auditors; they prepare election ballots and receive election returns; they issue marriage licenses; in some states they act as recorders of deeds and perform other duties varying in the different states. As court clerks, they keep the dockets and records of cases. The duties of the office are administrative, and in no sense political. Yet, in most states county clerks and court clerks are elected, usually for terms of two or four years. In several of the New England states they are appointed. See County Government. Reference: J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906), 115–118. J. A. F.

COUNTY COMMISSIONERS. In about half the states of the American Union boards of county commissioners which deal with certain matters of county administration are established in each county. In other states, similar functions are performed by boards of supervisors or county courts. County commissioners are found in four of the New England states (Massachusetts, Maine, New Hampshire and Connecticut); in ten middle Atlantic and north central states from Pennsylvania west to Kansas and the Dakotas; in four southern states (South Carolina, Florida, Alabama and Texas); and in most of the mountain and Pacific coast states.

Such boards are usually composed of from three to seven members. In Massachusetts, Pennsylvania, Ohio and in many of the far western states, there are regularly three members, elected at large. In Oregon there are only two commissioners in each county. Where there are more than three members, they are often elected by districts, as in Minnesota and Texas. In Connecticut, county commissioners are elected by the state legislature; and in most of the counties in South Carolina they are appointed by the governor on the recommendation of the local members of the legislature. The board of county commissioners for Cook County, Illinois, consists of fifteen members, ten of them elected from the city of Chicago, and five of them elected from the rest of the county.

County commissioners generally manage the county finances, have charge of county roads and sometimes other public works, and have control over poor relief; they sometimes have a limited ordinance and police power, and some supervision over township and other county

officers. Their power of taxation is limited to enumerated purposes and often by a maximum rate; and in Massachusetts, Connecticut, New Hampshire and Indiana, the county commissioners do not levy taxes. The largest items of expenditure are for courts, roads and bridges and poor relief; but in New England, county roads are an important item only in Maine and county poor relief only in New Hampshire. In the southern and far western states, county commissioners often license liquor saloons, peddlers and other businesses, create county precincts and establish polling places.

The small boards of county commissioners appear to be more efficient administrative bodies than the large boards of supervisors. But the union of taxing and spending powers has caused some criticism; and has led in Indiana to the creation of county councils in addition to the boards of county commissioners.

See County Government; County and City Government, Concurrent; County-Precinct System; Court, County; Local Government and the States; Supervisors; Town-County System.

References: J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906), chs. iii, v; G. E. Howard, *Local Constitutional History* (1889), 438–470.

John A. Fairlie.

COUNTY COMMITTEE. See Committees, Party; Party Finance; Party System in Doubtful States; Party System in Sure States; Organization.

COUNTY COUNCIL, AMERICAN. By act of 1899, there was established in each county in Indiana a county council of seven members, four elected by districts and three at large. The county councils make appropriations for county expenses and have power to borrow money and issue bonds. The boards of county commissioners continue as the executive authority for carrying out the policy determined by the appropriations. **See** County Government; Court, County; Local Self-Government.

J. A. F.

COUNTY COUNCIL IN GREAT BRITAIN. **Territorial Division.**—For various administrative purposes England and Wales were, in 1888, divided into sixty-three counties with elective administrative bodies known as county councils. These administrative counties do not coincide with the historical counties or shires of England and Wales, of which there were only fifty-two, and which still remain as important areas for parliamentary and judicial purposes. So far as practicable the new administrative counties were given the same boundaries as the ancient counties; but seven of the latter, Yorkshire, Lincolnshire, Sussex, Hampshire, Northamptonshire, Cambridgeshire, and Suffolk, were divided into two or more administrative counties, and the county of London was created outright (*see* London County Council). The administrative counties vary in population from Rutland with less than 25,000 inhabitants to London with nearly 5,000,000. All are provided, however, with substantially the same administrative machinery.

Organization.—The governing authority of the county is the county council, which is made up of a specified number of councillors elected for a three-year term. The suffrage qualifications are substantially those which exist for local elections in England (*see* Local Government in Great Britain). Unmarried women who pay local taxes as owners or occupants of rateable property are entitled to vote but are not qualified for membership in the council. The rules relating to nominations, polling procedure, contested elections, and corrupt practices, are the same as those which are provided for the conduct of parliamentary elections in England.

After the councillors have been elected they choose, for a six-year term, a number of aldermen equal to one third of the number of councillors. Half the aldermen retire triennially. The aldermen are usually chosen by the councillors from among their own number; but this is not legally necessary. They sit with the councillors and, save for their longer term, have no special privileges. The county councils, select, each year, their own chairman and vice-chairman. The councils meet four times a year and are empowered to arrange their own rules and methods of procedure. All of the members, both councillors and aldermen, serve without remuneration. The council's work is done by means of various standing and special committees.

Powers.—The act of 1888 transferred to the county council practically all those administrative powers which had been exercised, prior to that date, by the justices of the peace in quarter sessions. Judicial authority was not transferred, and one or two important administrative functions were excepted. The control and supervision of county police, for instance, was committed to the county council and the justices of the peace to be exercised by them through a joint committee; and the function of granting liquor licenses was left with the justices alone. Appeals from assessments for county taxes are still heard by the justices. But in all other administrative matters the county council was given sole authority and jurisdiction, subject in many things, of course, to the supervision of the Local Government Board and the other organs of central administration.

In general, the county council can make bylaws or ordinances on local matters: it is charged with the maintenance and repair of county roads and bridges as well as with the

regulation of traffic upon them. It provides and maintains asylums, reformatories, and industrial schools. By the Education Act of 1902 (2 Edward VII, C. 42) it is given important powers in matters of elementary and higher education. The county council supervises the sanitary administration of the rural districts and performs various functions under the laws relating to public health, as, for example, the taking of measures against the spread of contagious diseases. It is entrusted with the enforcement of the various acts relating to the inspection of weights and measures, the protection of fish and game, and the destruction of preying animals or insects. The county council also appoints the county coroner, the county surveyor, and some other county officers. It is the licensing authority for such places of amusement (*e. g.*, race courses) as are not within the limits of chartered boroughs. It supervises the enrollment of voters and fixes the places of polling in connection with parliamentary elections. It has been given certain powers in relation to agricultural development by the Small Holdings Act of 1892 (55 and 56 Victoria C. 31) and other like legislation; and the Light Railways Act of 1896 (59 and 60 Victoria, C. 48) gave the county council power to construct and operate tramways subject to the approval of the board of trade. In addition to these statutory powers the county council may exercise authority over such other matters as may be from time to time submitted to it by a provisional order of the Local Government Board. By the Act of 1894 (57 and 58 Victoria C. 73) the county council was given some general supervisory jurisdiction over the work of the various parish and district councils (*see* PARISH COUNCIL; RURAL DISTRICT COUNCIL) within the county, particularly with respect to coördinating the work of these local bodies, and adjusting disputes which may arise between them concerning boundaries and such matters. In a word, the act of 1894 endeavored to place upon the county councils the entire responsibility for the efficiency and conduct of the rural authorities within their jurisdiction.

Finances.—The county council has power to levy its own rate or county tax. This is levied upon the various parishes of the county in proportion to the value of their taxable property, and the levies are in turn collected from the parish ratepayers by the parish overseers. In addition the county treasury receives income from several other sources. Certain fines and fees go into it; also a stated portion of payments for licenses; certain subventions from the imperial exchequer; and a share of certain taxes collected by the national government as arranged by the provisions of the Local Taxation Act of 1890 (53 and 54 Victoria C. 60) and other acts. County councils also have power to borrow money on county bonds, but only with the approval of the Local Government Board. This body also has the responsibility of auditing the accounts of the county treasurer.

Since 1888 the county councils have done much to improve the workings of local government in England. Their membership is drawn largely from the ranks of the county gentlemen; they seldom show partisanship either at council elections or in their deliberations; they have acquired public confidence, and on the whole, have been very efficient in the exercise of their powers.

See BOROUGH COUNCIL IN ENGLAND; COUNTY COUNCIL, AMERICAN; LOCAL GOVERNMENT AND THE STATES; LOCAL GOVERNMENT IN ENGLAND; LOCAL SELF-GOVERNMENT; LONDON COUNTY COUNCIL; PARISH COUNCIL IN ENGLAND; PARISH VESTRY IN ENGLAND; RURAL DISTRICT COUNCIL; SHIRES IN GREAT BRITAIN.

References: J. Redlich and F. W. Hirst, *Local Government in England* (1903), II, chs. i–v; A. L. Lowell, *Government of England* (1908), II, ch. xlv; A. McMorran and T. R. C. Dill, *Local Government Act of 1888* (3d ed., 1898); W. B. Odgers, *Local Government* (1901), ch. x. WILLIAM BENNETT MUNRO.

COUNTY COUNCIL, LONDON. See LONDON COUNTY COUNCIL.

COUNTY COURT. See COURT, COUNTY.

COUNTY DEMOCRACY. New York County Democracy was founded by Abram S. Hewitt and others in 1880 with the object of defeating Tammany Hall and of reforming the Democratic organization. The delegates of County Democracy were declared "regular" at the state convention of 1881 and were seated in place of the competing Tammany representation. By fusion with the older faction, Irving Hall, County Democracy elected Mayor Grace in 1884. Tammany joined forces with County Democracy in 1886 to elect Mr. Hewitt as mayor over Mr. Henry George, the candidate of united labor; but it deserted Mr. Hewitt later when he proved to be independent of its control. The defeat of Mr. Hewitt in his campaign for reëlection in 1888 marks the end of County Democracy which disappeared in 1890, becoming merged with other reform organizations. See PARTIES, STATE AND LOCAL; REFORM MOVEMENTS, POLITICAL; TAMMANY. **References:** G. Myers, *Hist. of Tammany Hall* (1901), 312–328; C. A. Beard, *Am. Gov. and Pol.* (1910), 661. J. M.

COUNTY FARMS. In many states, county institutions for the relief of the poor are located on a considerable tract of land in the rural districts, where farming is carried on by the inmates. See CHARITIES, PUBLIC AGENCIES FOR; HOUSES OF CORRECTION; REFORMATORIES. J. A. F.

COUNTY GOVERNMENT

Definitions.—Among the districts of local administration in the United States, the most common is the county. Every state is divided into districts called counties—except the state of Louisiana, where the corresponding district is known as the parish—with much variation in the powers and organization of the county authorities; there are yet important features in common which mark county administration as fundamentally similar throughout the United States.

Origin.—The American county occupies a distinctly different position in the general plan of public administration from that of the local districts in European countries. The name county indicates its historical connection with the county in England from which the American county has developed. But in its functions and general importance the American county now differs widely from the English county; while it is even less like the provinces, departments, or other local districts in the countries of continental Europe.

To understand the development of the county in the United States it is necessary to review the system of county administration in England in the seventeenth century, when the English colonies in America were established. At that time the important county officials in England were the lord lieutenant, the sheriff, the coroner, and justices of the peace. All but the coroner were appointed by the Crown; but after the decline of the active control by the Privy Council, local administration in practice was highly decentralized. The lord lieutenant was head of the militia system. The sheriff was the chief conservator of the peace and executive agent of the judicial courts. But local administration was mainly looked after by the justices of the peace, the justices in each county forming collectively a quarterly court of criminal jurisdiction, which also acted as the fiscal and administrative authority for county affairs.

Colonial Counties.—In the American colonies, counties were organized with similar officials, appointed by the colonial governors. But during the colonial period, and especially about the end of the seventeenth century, important changes were made in some of the colonies. In New York and Pennsylvania, locally elected county boards were established which gradually acquired the fiscal and administrative powers of the justices of the peace In Pennsylvania the sheriffs were made locally elective in 1705. Some new county officers and additional county functions also developed—the county treasurer appearing first in Massachusetts, local prosecuting attorneys in Connecticut, and in most of the colonies county recorders to keep public records of deeds and other documents affecting titles to land.

At the same time the importance of the county was affected by the development of town government in New England, and to some extent in the middle colonies from New York to Pennsylvania. But in the southern colonies the county was the main unit of local administration.

Post Revolutionary Type.—From the Declaration of Independence in 1776 until the middle of the nineteenth century important changes in county administration, as well as in other features of state and local administration, were gradually introduced both in the seaboard states and the new states organized in the interior. The main results of these changes were to establish a radically democratic and decentralized system. The electoral franchise was extended to include all male citizens. The county officials were made locally elective; and the number of such officials was largely increased. In most of the states an elective county board took over the administrative functions of the justices of the peace; while the sheriffs, prosecuting attorneys, county treasurers, county clerks, county recorders, and the justices of the peace all became elective officials.

Since the Civil War there have been few general and permanent changes in the legal principles of county administration. But with the growth of the United States there have been important developments in the functions of the county and in the methods of administration. The county system has been extended throughout the country, and the increase of population and the general tendency toward the expansion of the activities of government have added greatly to the scope of county administration.

Variations.—There are about 3,000 counties in the United States. Most of the larger states have from 60 to 100 counties each. At one extreme Texas has 243 counties; at the other Rhode Island has five and Delaware three.

In area and population the counties show great differences. Nearly two thirds of the counties contain from 300 to 900 square miles; and the most usual areas are from 400 to 650 square miles. More than half the counties have a population of 10,000 to 30,000; but in the north Atlantic states more than half the counties have over 50,000 population, while in the southern states, and still more in the states west of the arid plains, many counties are to be found which have less than 10,000 population.

Nine tenths of the counties are distinctively

rural in character, but a considerable number of counties contain important cities, and the most important counties are those where the largest cities are located—as New York City (which includes four counties), Chicago, Philadelphia, St. Louis, Boston, Baltimore, San Francisco, and Denver. In some of these cases the county administration is partly absorbed in that of the city (*see* COUNTY AND CITY GOVERNMENT, CONCURRENT).

Significance.—The comparatively small area and population of most counties in the United States necessarily makes them less important for some branches of public administration than the counties, departments, and provinces in European countries. On the other hand, the highly decentralized methods of administration followed in the states of the American Union add much to the number of officials locally elected by counties. Not only local county authorities, but even the local agents of the state government are elected within each county, and are subject to little or no effective supervision by the central government of the states. The National Government has no supervision or control whatever over county or other locally elected officials.

Legislative Functions.—The powers and public functions of counties and county officials are far from uniform in all the states; and there are wide variations between the states in the relative importance of the county as an administrative district. But it is possible to note certain common factors, and to call attention to some of the most important differences.

Very little in the way of legislative power, even in local matters, has been conferred on counties in the United States. They are considered in law as primarily agents and instrumentalities of the state to carry out its governmental functions. The county officials thus act almost entirely under the provisions of statutes passed by the state legislatures, which define their duties and enumerate their powers in minute detail. In some cases, however, important questions are submitted to a popular referendum of the whole body of electors in the county—such as loans for public buildings or public works, and the prohibition or licensing of places for the sale of intoxicating liquors, under "local option" laws. In 1909 a more general grant of local legislative power was made to the county authorities by the legislature of the state of Michigan.

Administrative Functions.—If the legislative power of the counties is small, their administrative functions are extensive; and locally elected county officials are intrusted with the execution of the most important state laws. In all the states the county is primarily a district for the administration of justice. Courts of general criminal and civil jurisdiction are held at frequent intervals in every county. The judges of these courts are usually elected (or in some states appointed) for a larger district than a single county; but a number of the more populous counties form, each, a judicial district for such courts; while in some states county judges, with a limited jurisdiction, are locally elected. Even for the courts of general jurisdiction, the administrative officers (clerks, sheriffs, and prosecuting attorneys) are, as a general rule, elected within each county. In connection with the administration of justice, court houses and jails are maintained in each county. The county is also, to a slight extent, a police district, the sheriff acting as conservator of the peace; but no system of organized and disciplined county police has been developed in any of the states In nearly every state the county is the district for the public record of land documents, and for the probate of wills, the administration of estates, and supervision of orphans.

Except in the New England states, counties have important functions in the construction and maintenance of roads and bridges, and sometimes of other local public works. But even the construction of main highways is for the most part done in a primitive way, and, in the states where good roads have been built, the work has been done mainly by the state.

In nearly all the states the county is a district for the administration of poor relief. Public almshouses or poorhouses are maintained, and in the more populous counties there are other charitable institutions. But such specialized institutions as hospitals for the insane, and schools for the deaf and dumb, are, for the most part, maintained directly by the state governments.

Outside of New England the county is a district for school purposes. In the most important group of states, covering the central region from New York and New Jersey west to Kansas and Nebraska, county school officers supervise the local school officials in the rural districts. In many of the southern and far western states the county is the main unit for local school administration.

In many states the county is also a district for the administration of health and sanitation laws.

Finance.—In connection with these functions, and also as agents for both the state and smaller districts, the county in all but two or three New England states is a district of considerable importance in finance administration. It levies taxes and expends the proceeds for the different purposes noted above. In most states county officials act also as agents for the collection of state revenues, and frequently also for the collection of revenues of smaller local districts. In the states of the South and the far West, property is assessed for taxation by county officers; and in many other states county officers have some supervision over local assessments.

The numerous list of officials elected in each

COUNTY OFFICERS

Name of State	No. of Counties	County Bd. No. of Members	County Judge	Probate Judge	Prosecuting Atty.	Sheriff	Coroner	Clerk of Court	Register of Probate	County Clerk	Register of Deeds	County Auditor	County Assessor	County Treasurer	County Surveyor	Supt. of Schools	Supt. of Poor	Health Officer
Maine	16	3		El.	El.	El.	App.	El.	El.	-------	El.			El.				
New Hampshire	10	3		App.	El.	El.	App.	App.	El.	-------	El.	App.		El.				
Vermont	14	2	El.	dist.	El.	El.		App.		-------		App.		App.			App.	
Massachusetts	14	3		App.	Dist.	El.	-------	El.	El.	-------	El.			El.				
Rhode Island	5	None.				App.		App.										
Connecticut	8	App. 3	s.	dist.	App.	El.	App.	App.				App.		App.				App.
New York	61	Var.	El.	El.	El.	El.	El.	-------		El.	-------	s.		El.		dist.	El.	
New Jersey	21	Var.	App.	El.	App.	El.	El.	-------		El.	s.	App.		App.		App.	s.	
Pennsylvania	67	3		El.	El.	El.	El.	El.	El.	-------	El.	El.	El.	El.	El.	App.	s.	
Delaware	3	7–10		El.		El.	El.	El.	El.	-------	El.			El.		App.		App.
Maryland	24	3–5		El.	El.	El.	App.	El.		-------	-------			El.	El.	App.		App.
Virginia	100 14*a*	3–8		-------	El.	El.	App.	-------		El.	-------		El.	El.	App.	App.	App.	
West Virginia	55	3			El.	El.	App.	El.		El.			El.		El.	El.	App.	App.
North Carolina	98	3–5			Dist.	El.	El.	El.		-------	El.			El.	El.	App.		App.
South Carolina	44	Var.		El.	Dist.	El.	El.	El.		-------	s.	App.		El.		El.		
Georgia	137	-------	s.	El.	Dist.	El.	El.	El.			-------		El.	El.	El.	App.	s.	-------
Florida	46	5	El.	-------	Dist.	El.		El.					El.	El.	El.	El.		App.
Kentucky	119	8	El.	-------	El.	El.	El.	El.		El.			El.	App.	El.	El.		App.
Tennessee	96	Var.	El.	-------	Dist.	El.	App.	El.		-------	El.	-------	s.	El.	App.	App.	App.	App.
Alabama	67	5	-------	El.	Dist.	El.	El.	El.			-------		El.	El.	App.	El.		App.
Mississippi	76	5		-------	Dist.	El.	El.	El.				El.	El.	El.	El.	El.		App.
Louisiana	59*b*	Var.			El.	El.	El.	-------		El.	-------		El.	App.	El.	App.		App.
Texas	246	4	El.	-------	El.	El.		El.		El.	-------		El.	El.	El.	El.		App.
Oklahoma	26	3		El.	El.	El.	El.			El.	El.		El.	El.	El.	El.	-------	
Arkansas	75	Var.	El.	-------	Dist.	El.	El.	El.		-------	-------		El.	El.	El.	App.		
Missouri	115	3		El.	El.	El.	El.	El.		El.	s.	s.	El.	El.	El.	El.		App.
Ohio	88	3		El.	El.	El.	El.	El.			El.	El.	------	El.	El.	App.	El.	
Indiana	92	3(7)*c*	s.	s.	El.	El.	El.	El.			El.	El.	El.	El.	El.	App.	App.	
Illinois	102	Var.	El.	s.	El.	El.	El.	El.		El.	El.	-------	s.	El.	El.	El.	App.	
Michigan	83	Var.		El.	El.	El.	El.	-------		El.	El.	s.		El.	El.	El.	App.	
Wisconsin	71	Var.	El.	-------	El.	El.	El.	El.		El.	El.	-------	El.	El.	El.	El.		
Minnesota	83	3–5		El.	El.	El.	El.	El.		-------	El.	El.		El.	El.	El.	App.	------
Iowa	99	3–7			El.	El.	El.	El.		-------	El.	El.		El.	El.	El.	App.	
Kansas	106	3		El.	El.	El.	El.	El.		El.	El.	s.		El.	El.	El.		
Nebraska	91	Var.	El.	-------	El.	El.	El.	El.		El.	s.			El.	El.	El.		
South Dakota	58	3–5	El.	-------	El.	El.	El.	El.		-------	El.	El.	s.	El.	El.	El.		App.
North Dakota	45	3–5	El.	El.	El.	El.	El.	El.		-------	El.	El.	s.	El.	El.	El.		App.
Montana	28	3			El.	El.	El.	El.		El.	-------	s.	El.	El.	El.	El.		
Idaho	23	3		El.	El.	El.	El.	El.		-------	-------	------	El.	El.	El.	El.		
Wyoming	13	3		-------	El.	El.	El.	s.		El.	-------		El.	El.	El.	El.		------

COUNTY OFFICERS—*Continued*

Name of State	No. of Counties	County Bd. No. of Members	County Judge	Probate Judge	Prosecuting Atty.	Sheriff	Coroner	Clerk of Court	Register of Probate	County Clerk	Register of Deeds	County Auditor	County Assessor	County Treasurer	County Surveyor	Supt. of Schools	Supt. of Poor	Health Officer
Colorado	59	3-5	El.	------	Dist.	El.	El.	------		El.	------		El.	El.	El.	El.	------	------
New Mexico	26	3		El.	Dist.	El.	------	El.	El.		------		El.	El.	El.	El.		------
Arizona	13	3		El.	El.	El.	El.	El.		s.	El.		s.	El.	El.	s.		App.
Utah	27	3			El.	El.		------		El.	El.	s.	El.	El.	El.	El.		
Nevada	14	3		------	El.	El.	------	------		El.	El.	El.	El.	El.	El.	El.		
California	58	3-7	El.	------	El.	El.	El.	------		El.	s.	El.	El.	El.	El.	El.		App.
Oregon	33	2		------	Dist.	El.	El.	------		El.	s.	El.	El.	El.	El.	El.		
Washington	38	3		------	El.	El.	El.	------		El.	------	El.	El.	El.	El.	El.		App.

a. Cities. *b.* Parishes. *c.* 3 County Commissioners; 7 members in the County Councils.
El., an Elective County Office. s., a county office in some counties.
App., an appointive county office. ------, duties performed by some other officer.
dist., elected or appointed for district smaller than a county. Var., number varies in different counties.
Dist., elected or appointed for district larger than a county.

county makes the county an important election district, and it is, also, always a unit for the canvass of votes for officials elected in larger districts, such as members of Congress and state officers. The position of the county as an election district is indicated by the importance of the county committee in the political party organizations in many of the states.

Relative Geographical Importance.—Measured by the number of functions and by the relative importance of the county in comparison with smaller local districts, the county is of most importance in the southern states and the mountain and Pacific coast states of the West. By these tests the county is relatively of least importance in the New England states, where on one hand the judicial administration is more highly centralized, while on the other hand the towns are local districts of importance.

But if a quantitative standard of the intensity of county administration is applied, the results are somewhat different. Judged by the per capita rate of expenditure the county is of much the greatest importance in the states from the Rocky Mountains westward. Second rank is taken by the populous middle Atlantic and north central states, where, indeed, the largest aggregate county expenditures are made. By this standard of per capita expenditure the southern states fall in the same group with three of the New England states—Massachusetts, New Hampshire, and Maine. In the three remaining New England states county finances are practically negligible.

Census statistics of county receipts and payments for the year 1902 show that the largest specific item is for schools, but this is made up mainly by the southern and western states. Next in importance are expenditures for roads and bridges; third, are the expenditures for courts, which are the largest specific item in the New England group; and fourth, are the expenditures for charities, which form the largest specific item in the middle Atlantic and north central groups.

Of the grand total of county receipts and payments ($497,998,236), more than half were temporary funds, mostly revenues collected for the state governments and for other local authorities. The total revenues and payments for expenditures made directly by the county authorities ($197,000,000) was somewhat larger than the total revenues and payments of the central state governments. But both state and county finances in the United States are but a small fraction of the financial transactions of the National Government or those of the cities.

County Boards.—No well-defined or systematic principle seems to have been followed in the organization of county administration except that popular election has been extended to all classes of county officials indiscriminately. There is no authority with important pow-

ers of local legislation corresponding to the councils general of France, the county councils of England, or the provincial diets in Prussia. There is in all but two states a county board, which usually levies local taxes and has general supervision over the local administration, though by no means an effective control over the other elective officials. In most of the states these county boards are composed of three to five members, usually called commissioners (*see*). In a number of states, however, the county boards are larger, and are composed of from fifteen to fifty members, elected by the townships and cities or other local districts. Such boards of supervisors are found in New York, Michigan, Wisconsin, and Illinois; and there are somewhat similar bodies in Louisiana under the title of police juries. In some of the southern states (Kentucky, Tennessee and Arkansas) the fiscal and administrative business of the county is still performed by the local justices of the peace, sitting as a county court—these justices being also elected in sub-divisions of the county. But these larger bodies have, as a rule, little more legislative power than the small boards of commissioners, and their size makes them rather unwieldy for administrative business. An important exception is found in the very recent legislation of Michigan, where the boards of supervisors have been given a broad and general grant of local legislative powers.

In a few states the powers of taxation and appropriations are placed in a body distinct from the county board, as in Indiana, where there was established (1899) in each county a small county council (*see*) in addition to the board of county commissioners; while somewhat similar results have been secured in other ways in some of the smaller New England states. But this separation of powers is as yet exceptional, and at present does not seem likely to become a general system.

County Officials.—Besides the county board there are a considerable number of other county officials, most of them chosen by popular election. These elective officers are largely independent within their own sphere, and there is no effective supervision either by the county board, or by any one of the officials clearly recognized as the chief executive officer of the county, or by any state authority.

The sheriff is the oldest of the county officers but he has lost very much of the power and dignity of the English sheriff. He still retains some relics of former authority as chief conservator of the peace, but for the most part is now a ministerial officer of the judicial courts, to execute their warrants and decrees. The public prosecutor has now become one of the principal county officials in some of the states; and in counties containing large cities, such as New York, Chicago, Philadelphia, and St. Louis, the importance of this office is coming to be more fully realized. In several cases it has been a stepping stone to the governorship of a state. The office of county treasurer is usually one of the most lucrative; and is important as the financial agent not only of county funds, but also as the collector of state revenues and sometimes also the revenues of loeal districts within the county.

Other elective county officials of less importance are the county clerks, recorders of deeds, auditors, assessors, school commissioners, surveyors, and coroners. The precise titles of some of these officials vary in the different states. In the New England states there are comparatively few county officers; and in Rhode Island there are only two—the sheriff and clerk of court, both of whom are chosen by the general assembly of the state. On the other hand, there are, in some states, additional elective officials besides those named above; and in most of the states there are also a number of appointed officials, such as poor commissioners and health officers.

County officers in the United States are usually elected for terms varying from two to six years. In the older states east of the Mississippi River, the terms of different officers often vary. West of the Mississippi most of the states have a uniform term of two years for county officers, and all terms expire at the same time.

Difficulties.—There can be no doubt that county administration in the United States lacks systematic organization, and that there are too many elective offices. The numerous list of positions and the slight importance of many of them makes impossible any real knowledge or discussion on the part of the voters of the merits and demerits of candidates. Elections, especially in the more populous counties, are usually determined by the success of one party ticket, and the effective choice is thus made in selecting the party candidates. This has tended to strengthen the influence of party bosses; and in many cases county offices have been filled by politicians of the lower types. In rural counties a popular candidate may more often secure his election on personal grounds; and there have been some important cases of successful independent candidates in populous counties. But, as a rule, comparatively little public attention is paid to the election of county officials. The short terms promote frequent changes in the offices, many of which are purely administrative and with no political functions. At the same time the duties of the county officials are of no little importance; and as their importance is steadily increasing there is now a serious need for considerable changes in the organization of the county administration.

See Auditor, County and Town; Chosen Freeholders; Coroner; Court of Probate; Court, Orphans'; Police Jury; Sheriff;

Shires in Great Britain; Supervisors; Town-County System.

References: J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906), chs. iv, vi, vii; F. J. Goodnow, *Administrative Law of the U. S.* (1905); G. E. Howard, *Local Const. Hist. of the U. S.* (1889); A. B. Hart, *Actual Government* (1903), § 83, "Colonial Shire" in *Practical Essays in Am. Gov.* (1894), ch. vii; *Am. Year Book, 1910,* 201–207, *ibid, 1911,* 224, and year by year; J. Bryce, *Am. Commonwealth* (4th ed., 1910), ch. xlix, bibliography in A. B. Hart, *Manual* (1908), § 208.

John A. Fairlie.

COUNTY JAILS. The county jail system prevails generally throughout the United States. County jails are used for two distinct and inconsistent purposes: (1) for the temporary detention of persons awaiting trial, important witnesses who are unable to give bail, and insane persons awaiting examination; (2) for the confinement of prisoners sentenced for misdemeanors and petty offenses. In some states jail sentences may extend to a year or even two years.

It is universally agreed by students of penology that the county jail system of the United States is bad. Most jails are unsanitary, badly lighted, and badly ventilated. In nearly all jails prisoners are kept in idleness, with abundant opportunity to corrupt each other. Prisoners awaiting trial and prisoners serving sentence associate indiscriminately. The innocent and the guilty share alike. Dirt and vermin prevail in many jails. The insane person and the witness are innocent, but in the eyes of the law, so is every person awaiting trial. On the other hand, the prisoner serving sentence receives no treatment that will be a terror to evil doers and will deter him from future offences.

How can detention in the same prison, in the same room, under the same officer, with the same diet, be made to one prisoner a humane and easy detention, and to another a severe and bitter punishment? The county jail accomplishes it by giving the humane and easy detention to the guilty and the severe and bitter punishment to the innocent, or presumably innocent. The misdemeanant is a tramp, a vagabond, a frequenter of evil resorts; dirt and vermin have no terror for him. A warm fire, plenty of good food, a pipe of tobacco, a pack of cards, and companions like himself are paradise to him. A decent man or woman, falsely accused, transported through the streets in hand-cuffs, thrust into a steel cage where he is exposed like a wild beast in a menagerie, put into a cell where he cannot keep himself free from vermin, and where he must listen day and night to the vilest language, undergoes a fearful punishment.

Two remedies have been proposed for the evils of the county jail system: (1) The separation of prisoners, each to be kept in his own cell, separate from every other prisoner. This has been carried out in some of the best jails of Massachusetts and Pennsylvania. It is required by law in Ohio and Minnesota, but the law is largely inoperative. (2) A state jail system, including district jails administered under state authority. This plan is advocated by many penologists as the only reasonable solution of the problem.

See County Government; Penalties for Crime; Penitentiaries; Prison Discipline.

References: Ill. State Board of Charities, *Biennial Reports* (1872 to 1908); Ill. State Charities Com'n, *Reports,* 1911–12; C. R. Henderson, "Report of Committee on Jails" in Nat. Prison Assoc., *Proceedings,* 1907, 94, 114; "Report of Committee on Workhouses" in *ibid;* Mass. State Prison Com'n, *Annual Reports;* Ind. State Board of Charities, *Biennial Reports* (1899 to date); Mo. State Board of Charities, *Bulletin,* No. 2 (Aug. 15, 1910), 40–56; N. Y. State Com'n. of Prisons, *Annual Reports* (1896 to date); F. H. Wines, in Nat. Conf., Charities and Correction, *Proceedings,* 1911, 52–56, *Punishment and Reformation* (1910); U. S. Bureau of the Census, *Prisoners and Juvenile Delinquents in Institutions* (1904); see *ibid* for list of state prisons and reformatories, *Annual Reports; Am. Year Book, 1911,* 461, *ibid, 1911,* 381, and year by year.

Hastings H. Hart.

COUNTY-PRECINCT SYSTEM. In the southern states, and also in the mountain and Pacific coast states, no general system of town or township government has been established in the rural districts; and local government is almost entirely vested in county officials. Counties in these states are, however, usually divided into precincts or districts for certain purposes; and the term county-precinct system has been applied to this general type of local government, in contrast with the town system of New England, and to the mixed town-county system in the other states.

The county board under the county-precinct system is usually a small body of three to five elected members, most often called commissioners (*see*), but in some of the states there are other names and forms of organization. In Virginia, Mississippi and California, the county boards are called boards of supervisors (*see*), although the number of members does not exceed eight. In Kentucky, Tennessee and Arkansas, the quarterly court of justices of the peace acts as the administrative board for the county; and in West Virginia and Missouri, the county administrative board is called the county court (*see*). In Louisiana, the corresponding authority is called the police jury (*see*). In Georgia, the principal county official is the ordinary (*see*).

Other county officers in these states include the sheriff, coroner, clerk, assessor, treasurer,

surveyor, superintendent of schools and, sometimes, the county or prosecuting attorney.

County precincts or districts (*see*) are established for various purposes, such as elections, petty justice, roads and schools. These districts differ from towns and townships in that separate areas are usually mapped out for each purpose, and—except the school districts in some states—they have no separate power of taxation and have no corporate powers. Such county districts have a considerable variety of names. In Virginia, West Virginia and Kentucky, they are called magisterial districts; in Tennessee, civil districts and in Georgia, militia districts. In North and South Carolina, Arkansas, Missouri, Montana and California, the term township is used for such non-incorporated districts. In Louisiana, the subdivisions of the parish are known as wards; and in Delaware, the old English term hundred is still retained. In other states the more usual term is precinct. Such districts are used for the election of justices of the peace, members of the county boards and sometimes for school and highway officials.

See County Government; Supervisors; Towns and Townships.

References: G. E. Howard, *Local Constitutional History* (1889), 385, 443, 464, 468–70; J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906), chs. v, x.

John A. Fairlie.

COUNTY SEATS. In every county some city or town is selected as the county seat, or headquarters for the county administration. Here the county and often other courts are held, and the principal county officials have their offices. A court house and jail are regularly provided, the former including quarters for the administrative officials, as well as the courts. In rural counties, the court-house is often the most imposing building in the county.

In newly settled regions the location of the county seat, concentrating there the public business, will often determine what is to be the principal community in the county; and there is an eager rivalry between different places to secure this position, and at times efforts are made to change the location. In many states the legislatures determine the county seat, and may change it; but in about half of the states, mostly west of the Alleghanies, there are constitutional provisions requiring a local popular vote for these purposes.

While usually the county seat is or becomes the largest town or city in the county, there are numerous cases where a small village near the center is the county town, although there is a much larger city in the county. Thus in Calhoun County, Mich., the county seat is not Battle Creek, but the smaller city of Marshall. In several New England states, where many of the counties are large and populous, courts are held in two or more places in such counties, as in Middlesex County, Mass., where courts are held both in Cambridge and Lowell; and in some other cases there are counties with more than one county seat.

As a general rule, the county seat is not merely the lot and buildings used for public purposes, but the city or village in which they are located. But in several cases, it has been decided that territory added to such a city or village after the location of the county seat is not included; and that to erect new county buildings in the annexed territory constitutes a removal of the county seat, for which a popular vote may be required.

See County Commissioners.

References: J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906), 72–74.

John A. Fairlie.

COURT, APPELLATE. Appellate courts are superior tribunals having power to review and revise the judicial action of an inferior tribunal. Such a court may be either an intermediate appellate court or a court of last resort. The ordinary method of review is by writ of error in cases at law, or by chancery appeal in equity proceedings. The writ of certiorari (*see*) is also employed in special cases to review proceedings of inferior courts. **See** Appeals from Legal Decisions; Cases; Judiciary and Judicial Reform; Law, Criminal; State Judiciary. **Reference:** S. E. Baldwin, *Am. Judiciary* (1905), ch. xix.

J. M. M.

COURT, CIRCUIT, OF UNITED STATES. Formerly the original jurisdiction which might be conferred upon the federal judiciary was divided between district courts and circuit courts. But by the recent judiciary act of Mar. 3, 1911, which went into effect Jan. 1, 1912, the circuit courts as courts of original jurisdiction were abolished. **See** Courts, Federal.

F. McC.

COURT, COMMERCE. The commerce court in a tribunal created by act of Congress approved June 18, 1910, for the purpose of securing: (1) uniformity of decision in the interpretation and application of legislation affecting commerce; (2) expeditious treatment of commerce cases; (3) the settlement of such cases by a tribunal possessing a special knowledge of transportation questions and a high degree of skill in dealing with them. The statute authorized the President to appoint five additional circuit judges; all subsequent assignments to be made by the Chief Justice of the Supreme Court from among the regular federal circuit judges; after 1914 no judge to be redesignated for this service until at least one year after the termination of his previous assignment. The court held its regular sessions at Washington, but might

hold special sessions anywhere in the United States. The judges were allowed $1,500 and traveling expenses, in addition to their regular salaries as circuit judges.

The jurisdiction of the court embraced practically all civil suits arising in connection with the Interstate Commerce Act, the Elkins Act, and their amendments: (1) suits to enforce, otherwise than by the criminal punishment, orders of the Interstate Commerce Commission (*see*) except those requiring the payment of money; (2) suits to annul or suspend orders of the commission; (3) suits for injunctions to require the observance of published schedules or to forbid discriminations; (4) suits for writs of mandamus to enforce the provisions of the Interstate Commerce Act.

The practice and procedure in this court resembled that in a federal circuit court, though there were no formal pleadings except a petition and answer. Appeals lay to the Supreme Court and in that tribunal had precedence over all other suits except criminal cases; but appeals did not supersede or stay the decrees of the commerce court, unless the Supreme Court, or a justice thereof, so directed.

President Taft appointed as judges of the court Martin A. Knapp, formerly Chairman of the Interstate Commerce Commission; Robert W. Archbald, William H. Hunt, and John E. Carland, all previously federal district judges; Julian W. Mack, a judge of an Illinois circuit court; and James Smith, formerly Governor General of the Philippine Islands. The Court organized February 8, and was opened for business on February 15, 1911.

The court's first session was held in Washington, April 3, 1911. In a majority of cases appealed to it during its first year the commerce court decided against the rulings of the Interstate Commerce Commission. A decision in the first case (282 *U. S.* 225) appealed to it from the commerce court was handed down by the Supreme Court April 1, 1912, and the decision of the court was reversed and the commerce commission was sustained. Strong opposition to the court developed because of its alleged reactionary policy. The impeachment of Judge Archbald of the commerce court by the House of Representatives July 11, 1912, further increased popular discontent with the court. Both the Democratic and Progressive parties demanded its abolition, in 1912, and both houses of Congress so voted. It was only through two vetoes of the legislative, executive and judicial appropriation bill, by President Taft, that an amendment was obtained allowing the appropriations for the court to continue till March 4, 1913. Further appropriations continued it in existence until Dec. 31, 1913, when it was finally abolished.

See COURTS, FEDERAL; INTERSTATE COMMERCE COMMISSION; INTERSTATE COMMERCE AND CASES; INTERSTATE COMMERCE LEGISLATION; TRANSPORTATION, REGULATION OF.

References: *U. S. Statutes* XXXVI, 539–557, 1146–1151; *Am. Year Book, 1911*, 210, *ibid, 1912.* HARRISON B. SMALLEY.

COURT, COUNTY. With the decline of the early shire court in England, in the latter part of the middle ages (*see* SHIRES IN GREAT BRITAIN), the quarter sessions of the justices of the peace in each county developed as a court of criminal jurisdiction and also as the administrative authority for fiscal and other county purposes.

When county governments were organized in the American colonies, the justices in quarter sessions also acted as a county court with both judicial and administrative functions. During the colonial period, new county administrative authorities were established in the North; but the county court continued much as before in the southern states until the middle of the nineteenth century. More recently county boards of commissioners or supervisors have been established in many of the southern states; but in several states the county court remains as the administrative authority, and in others some administrative functions are exercised by county courts.

In Kentucky, Tennessee and Arkansas, the county court of justices continues to exercise both judicial and administrative powers. In Tennessee and Arkansas, these courts consist of a considerable number of justices in each county; but in Kentucky the number of justices in each county has been reduced to eight. In West Virginia and Missouri county administration is in charge of small boards, still called county courts, but they have no judicial functions. In Vermont, the duties of county commissioners are performed by the assistant judges of the county court. In Pennsylvania, the court of quarter sessions, held now by the salaried judges of common pleas, exercises important administrative powers, such as establishing school districts, townships, boroughs, and election districts and issuing liquor licenses.

In most of the states, courts are organized in each county with jurisdiction in matters of probate; and in about a third of the states there are county courts with judicial functions. In Alabama the judge of probate is a member of the board of county commissioners, and in Georgia, the ordinary is judge of probate and also performs most of the administrative work of the county board in other states.

See COUNTY GOVERNMENT; COURT OF PROBATE; COURT OF QUARTER SESSIONS.

References: J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906), chs. vi; G. E. Howard, *Local Constitutional History* (1889). JOHN A. FAIRLIE.

COURT, GENERAL. See GENERAL COURT.

COURT, JUVENILE

Origin.—The idea of the juvenile court is the outgrowth of unregistered forces that have been influencing jurisprudence for many years. In 1890, South Australia provided for separate children's courts. Massachusetts, New York and certain other states, about this time, passed statutes providing for the separate hearing of children's cases. In 1893, J. J. Kelso, of Toronto, Canada, urged the establishment of such courts at a meeting of the Waif Saving Congress, held in Chicago. In the same year ineffectual legislation looking toward the establishment of a children's court was passed in the province of Ontario. An act following the general line of the Massachusetts act for the separate hearing of juvenile offenders passed the Rhode Island legislature in 1897 and became a law in 1898.

Notwithstanding these earlier statutes, it may fairly be stated that the first consistent effort looking toward the creation of a juvenile court as an institution, began with the establishment, in July, 1899, of the juvenile court of Cook County, Illinois. The bill which was to revolutionize the attitude of society toward the offending child was drawn by Judge Harvey H. Hurd, of Chicago, from an original draft by Dr. Hastings H. Hart, who served as secretary of the committee having the matter in hand. Following the establishment of the Chicago court, the movement spread rapidly through the West. The Denver court (1901) under Judge Ben B. Lindsey, and the Chicago court under Judge Julian W. Mack, carried on for years an active propaganda that has resulted in the establishment of juvenile courts in considerably more than half of the United States, in England and her colonies and in continental Europe.

Scope of the Law.—In most of the states of the Union having juvenile courts, the law covers dependent, neglected and delinquent children. The terms "dependent" and "neglected" children have been used interchangeably; in a few of the states the term "destitute" children has been used to embrace children defined under other laws as dependent children. Regard for exact terminology would seem to indicate the desirability of embracing within the scope of the law only two classes of children: (1) neglected children who are before the court as the result of some act of parental omission; (2) delinquent children, or children who have offended against the law. Neglected children in many cases would fall into the class of delinquent children, and as such could be dealt with by the court as delinquent. Dependent or destitute children, frequently involve only the question of relief; and while the earlier juvenile court laws were framed to reach these cases, they should not be embraced within the court's jurisdiction, where their condition is not due to any act of parental omission. Such cases belong properly to the regular relief agencies of the community.

The age limit provided under the law varies somewhat under the laws of the different states. In the main the court has jurisdiction over boys and girls sixteen years of age or under. In some states the jurisdiction is extended to seventeen years of age, and in a few of the states to eighteen, while the juvenile courts of a small number of states undertake to retain jurisdiction over the child until his majority.

Purpose.—On its face, the laws creating the court changed only the method of handling children's cases in court. As a matter of fact the whole attitude of society toward the offending child was transformed. The child who had found his way into court was not to be regarded as a criminal, to be punished and thrown into prison with adult offenders, but he was to be considered an object of the keenest solicitude to society. His individual welfare coincided with the well being of the state and he was to be saved to the state and not to be punished by it.

The juvenile court in the minds of its originators became an explicit acknowledgment of the obligation of the state to throw around the child its aid and protection and to direct him into the paths that lead to good citizenship. Having regard for this idea, emphasis throughout the proceeding is laid upon the correction of conditions responsible for the child's wrong doing, and not upon the act of the child itself.

Legal Principles.—The legal principles underlying the court are not new. The court is not a new piece of judicial machinery. The principles that are the brick and mortar of the court are found in many of the decisions of the early English chancellors. The primary legal question involved is the right of the court to control the custody of the child; to take it from its parents or guardian upon the broad ground that the welfare of the child and the good of the state require that this be done. Courts of last resort have uniformly upheld the right, upon the broad principle that the Court is exercising a power used from the earliest times by the English chancellors. There is an important distinction in that, while under the English chancery law the chancellors were dealing only with neglected or dependent children, the juvenile court's jurisdiction embraces as well the delinquent or offending child. The legislation creating the

juvenile court merely carries forward the idea that children below the jurisdictional age fixed in the law shall not be deemed, nor treated as, criminals.

Under these laws, therefore, there is no warrant for inflicting punishment upon the child. Where a legislature (Michigan) undertook to provide for punishment in a juvenile court law, the supreme court of the state held the law invalid. In so far as juvenile courts undertake to impose a penalty upon the child, they do violence both to the letter and spirit of the law and fail utterly to realize the ideals underlying the legislation. In the early history of the court, it was feared that courts of last resort might take the view that the proceedings involving the child were criminal or quasi-criminal and not equitable; as a concession, therefore, the terminology of the criminal law and certain requirements under the criminal law (warrants of arrest, trial by jury, etc.) were required under the juvenile court law.

The decisions of appellate courts have put this early fear to rest and there is, therefore, no reason longer to adhere to any of the requirements of the criminal law. Certain judges may still be found, although their numbers are decreasing, who dissent from this view. They insist upon applying with more or less rigour the methods of the criminal law. Children are required to plead in the manner of criminals—guilty or not guilty, they are put upon oath, they are punished, the judges who adhere to this procedure insisting that in no other way can the desired results be obtained.

For years it was thought inadvisable to permit an appeal from a judgment of the juvenile court. In practice, however, it is doubtful if such position is defensible upon grounds consistent with the welfare of the child. It may be admitted that the delay attendant upon unnecessary appeals is open to serious objection. There is more objection, however, to the arbitrary action of a judge not subject to review. The right of appeal is not only in the interest of the child and the parent, but it makes for greater care and more sympathetic consideration of the case on the part of the judge. It should be permitted in all cases in which the custody of the child is actually disturbed.

Type of Court.—The type of juvenile court varies largely with differing local conditions. In most of the United States the court is made part of an existing court; instead of bringing children's cases in police and justice courts, they are now heard in probate courts, circuit courts and district courts, all of which are courts of civil jurisdiction. Where made part of an existing court, the value of the juvenile court is dependent, in a large measure, upon the time the judge is permitted, by reason of his other duties, to give to the work of the juvenile court. In some states where the court is part of another court with a number of judges, many objections are overcome by assigning to the juvenile court one judge out of the total number of judges for the entire judicial year. This is the method of the Chicago court. In other cases the judges rotate, each sitting for a short period of from one month to a year in the juvenile court. Examples of such courts are found in Greater New York and parts of Pennsylvania. The practice of rotating judges is vicious and goes far to nullify the purposes of the court.

In a majority of the states the court is part of the county or probate court, with a single judge. One or two days a week are set apart for hearing children's cases. While in some states county or probate judges have found it possible to dispose satisfactorily of the children's cases coming before them, it may fairly be doubted if one or two sessions a week fill the need of the community. The community is best served by the judge who has ample time to consider the cases day by day. Obviously, this need is met by the special juvenile court, of which examples are found in Denver, Indianapolis, Boston and in Chicago, which to all intents and purposes is a special court.

Administration.—The whole machinery of the ordinary court must be modified so as to achieve the purpose of the law. Primarily, a close personal relation must be established between the judge and the child. This is not possible where the old type of a court room is still used. Sound procedure demands:

(a) The abolition of the conventional judicial bench and the use in lieu thereof of a simple table or desk.

(b) Proper supervision over children while awaiting hearing.

(c) The elimination of the uniformed officer from the court room.

(d) The coöperation of the press, to the end that the child and his behavior shall not be exploited.

(e) A sufficient number of salaried probation officers, paid out of the public treasury, appointed on merit and because of peculiar qualifications for the work, so as to provide adequate oversight of children on probation by men and women officers. A limited number of volunteer probation officers may be utilized, assuming that their work is supervised by paid officers.

(f) The establishment and maintenance of children's clinics for the purpose of making adequate medical and psychological tests. Experience has shown that juvenile delinquency and physical defect are closely related and that correction of the one frequently works the solution of the other. The work of Dr. Healey in connection with the juvenile court of Chicago points the way to one of the most important adjuncts in connection with juvenile court administration.

(g) The establishment of a detention home, separate and apart from the county or city jail, and in charge of a superintendent and matron, competent to teach children; or, an arrangement with the school authorities whereby children under detention will be taught. Such a detention home must make provision for adequate separation of its inmates and the child's leisure time must be amply cared for either by study or supervised play.

(h) The probation office must be so organized as to co-operate with every agency in the community engaged in social service work. The very nature of the task which falls to the court forces it into the closest relation with all social organizations.

Result.—Wherever these courts have been established, the number of children who have

come into conflict with the law has increased amazingly. The community has been quick to discover, however, the injustice of bringing a great number of children into the court. For this reason, too much reliance should not be placed upon the statistics which have been published by many of the juvenile courts in this country, in order to demonstrate their activity and effectiveness.

The juvenile court movement has demonstrated, above all things, that the court itself has been a forceful agent in uncovering hideous social wrongs that, but for it, might have gone on untouched. It has done what it could to right these wrongs, but the measures which it has applied are at best only palliative. It has succeeded above all in driving home the thought that children can be kept out of court by means wholly within the grasp of the community; that the remedy for all of the wretched maladjustment which confronts the judge in the court lies beyond the court room; that it is to be found in all the larger social activities which aim to catch the spirit of youth and lead it along normal lines by providing sane, healthful activities for energies that will be spent.

See CHILDREN, DEPENDENT, PUBLIC CARE OF; CRUELTY TO CHILDREN; JAILS; REFORMATORIES; SOCIAL REFORM PROBLEMS; STATE JUDICIARY; TRUANCY.

References: Sophonisba Breckinridge and Edith Abbott, *Delinquent Child and the Home* (1912); H. H. Hart, *Preventive Treatment of Neglected Children* (1910), *Juvenile Court Laws in the U. S. Summarized* (1910); J. W. Mack, "Juvenile Court" in Am. Bar. Assoc., *Proceedings,* 1909; B. B. Lindsey, *Problem of the Children* (1904); B. B. Lindsey and H. O'Higgins, *The Beast* (1910); *The Survey,* February 5, 1910 (devoted wholly to this question); B. Flexner, "Juvenile Court from the Point of View of the Lawyer" in Conference on Backward, Truant and Delinquent Children, *Proceedings,* 1909; "Decade of Juvenile Court" in Nat. Conf. of Charities and Correction, *Proceedings,* 1910; State Probation Com'n. of New York and Mass., "Reports" in *ibid,* 1906; S. J. Barrows, *Children's Courts in the U. S.* (1904–1906); Special Committee of Nat. Probation Assoc., *Report on Juvenile Courts and Juvenile Probation,* 1912; Denver Juvenile Court, *Report,* 1904; M. Bloomfield, *Vocational Guidance of Youth* (1911); *Am. Year Book, 1910,* 458, 460, *ibid, 1911,* 387–389, and year by year.
BERNARD FLEXNER.

COURT, NIGHT. A municipal court in New York City intended to give speedy and prompt decision in cases of night arrest, established in 1907. The practice of furnishing bail, especially for women arrested at night, had become a great evil inasmuch as the payment to the professional bondsman was not uncommonly divided between him and the police officer. Sometimes women were arrested on trivial charges. The straw bail system was nothing more nor less than blackmail. There were other evils to be corrected, evils which resulted in clogging the day courts with cases of petty misdemeanor; persons arrested for small offenses or without cause were detained until the morning or put to great inconvience. Since the establishment of the courts, persons arrested at night must be brought directly to the night court. A later act provided for separate courts for men and women. The results are reported to be highly beneficial in many ways, especially doing away with the professional bondsman evil. **References:** Board of City Magistrates of New York, *Annual Report* (1911); *Harper's Weekly,* LI., 1414.
A. C. McL.

COURT OF APPEALS, CIRCUIT. See COURTS, FEDERAL.

COURT OF APPEALS IN CASES OF CAPTURE. November 25, 1775, the Continental Congress provided that in all prize cases an appeal should be allowed from the state courts to Congress or such persons as it should appoint. Beginning August 5, 1776, such appeals were referred to special committees of Congress; on January 30, 1777, a standing committee of five was appointed. In January, 1780, Congress established in its place the Court of Appeals in Cases of Capture, consisting of three judges not members of Congress. In May, 1784, the judges reported that all the cases had been disposed of, but Congress kept the court in existence, on a slender basis, till May 16, 1787. In all, 118 cases are known to have come before the court and its preceding committees; in 45, the judgments of the state courts were reversed, in 39 affirmed. No doubt the court had some educative influence in preparing the people to consent to the creation of a federal judiciary of larger scope and power. See COURTS, FEDERAL. **References:** J. C. B. Davis, in *U. S. Reports, 131,* Appendix XIX; H. L. Carson, *The Supreme Court of the U. S.* (1892), 23–64; J. F. Jameson, "The Predecessor of the Supreme Court" in *Essays in the Constitutional Hist. of the U. S.* (1889), 1–44.
J. F. J.

COURT OF CLAIMS, FEDERAL. Since a sovereign state cannot be sued without its own consent, claims against the Federal government cannot be enforced by a judgment of an ordinary court but require separate treatment. Until 1855 claims against the United States were treated as matters of legislation, and investigated by committees. In that year the court of claims was established. It consists now (1913) of five judges appointed by the President with the advice and consent of the Senate to hold office for good behavior. The chief justice receives a salary of $6,500,

the others $6,000 each. Three judges are a quorum, and three must concur to render a decision. The jurisdiction of the court extends to all claims founded on the Constitution, a statute of the United States, a regulation of an executive department, or any contract express or implied. Claims based upon tort are excluded. In all such claims, the court may consider counter-claims, set-offs and claims for damages advanced by the United States against the claimant. Decisions in favor of claimants are payable on presentation to the Secretary of the Treasury, out of any general appropriation for the payment of private claims. District courts have concurrent jurisdiction in claims of $10,000 or less. Claims arising out of Indian depredations are also adjudicated by the court of claims and are payable out of tribal funds. In addition, either house of Congress or any committee of either may refer to the court any claim pending before them, for an investigation and report of facts. Similarly, heads of departments and accounting officers may refer claims of more than $3,000 which involve an important question or precedent. Congress has referred to the court for investigation and report two large classes of cases: the French spoilation claims (*see*), and claims for supplies and stores taken by United States forces during the Civil War. See COURTS, FEDERAL. References: S. E. Baldwin *Am. Judiciary* (1905), 147; F. J. Goodnow, *Principles of Admin. Law* (1905), 386–390; *United States Compiled Statutes* (1901), §§ 1049–1059.

F. D. B.

COURT OF CLAIMS, STATE. See COURTS, ADMINISTRATIVE.

COURT OF COMMON PLEAS. One of the English common law courts which developed out of the *curia regis* and continued until the reorganization under the judicature act of 1873. It had exclusive jurisdiction over all real actions and of common pleas—*i. e.*, those between subject and subject, as distinguished from pleas of the Crown which were tried in the Court of King's Bench. The former jurisdiction of the court of common pleas is now vested in the King's Bench division of the Supreme Court of Judicature.

In the United States, courts of common pleas are now to be found in New Jersey, Pennsylvania, Delaware and Ohio, one or more counties forming a judicial district for such courts. In Pennsylvania and Ohio they are courts of general original jurisdiction in civil cases at law; in New Jersey they have jurisdiction of civil personal actions, including exclusive jurisdiction under the recent employers' liability law, but do not try cases involving land titles. In Missouri and Kansas courts of common pleas have been established for some counties. In other states general original jurisdiction is usually vested in district or circuit courts. See COURT, APPELLATE; COURT, COUNTY; JUSTICE OF THE PEACE; STATE JUDICIARY. Reference: Bouvier, *Law Dictionary* (1897), I, 456–457.

J. A. F.

COURT OF CUSTOMS APPEALS. A new court of five judges was authorized by the tariff act of 1909 to hear all cases appealed from the board of general appraisers. Before its establishment appeals were taken to the federal circuit courts. By specializing a single class of appeals it was believed that cases would be decided more promptly, thus relieving commercial transactions of uncertainty and expensive delay. The establishment of this court, however, was opposed on the ground that a technical, special court would fall into ruts, that it was an unnecessary expense, and its establishment reflected upon the federal courts already in existence. See TARIFF ADMINISTRATION.

D. R. D.

COURT OF FIRST INSTANCE. Courts of primary jurisdiction. See STATE JUDICIARY.

J. A. F.

COURT OF INQUIRY. Courts of inquiry are agencies established by law to investigate questions of fact arising in the military establishment and, when required to do so, by proper authority, to give opinions upon the merits of the cases submitted for investigation. Such courts are composed of not exceeding three commissioned officers, who are assisted by a recorder, who prosecutes the inquiry, under the direction of the court, and is charged with the preparation of the record. Courts of inquiry are vested with such powers of courts martial as are essential to the prosecution of the inquiry with which they are charged. They are without authority to try criminal offenses, to determine questions of guilt or innocence, or to impose sentences. Lest they should be "perverted to dishonorable purposes," they can be appointed by subordinate military commanders only upon the demand of the officer or soldier "whose conduct is to be inquired of." The President is not so restricted and may appoint a court of inquiry in any case which, in his judgment, is worthy of investigation. Such courts, therefore, are a means of establishing the truth as to the conduct of an officer without the opprobrium of a court martial. See ADJUTANT GENERAL; ARTICLES OF WAR; COURTS MARTIAL. References: C. M. Clode, *Military Forces of the Crown* (1869), I, 188-189; G. B. Davis, *Military Law* (1846), 220-228; John O'Brien, *Military Law* (1906), 220-228; John O'Brien, *Military Law*, 795-822.

G. B. D.

COURT OF OYER AND TERMINER. Oyer and terminer courts are criminal courts. Delaware, in 1792, had provision for such courts, the justices of which were the supreme court

judges of the state. The chief justice and four associate justices composed the oyer and terminer courts. Three constitute a quorum. This court may direct a question of law to be heard by the court in banc. New York had a court of oyer and terminer until 1895. Pennsylvania in 1838 and in 1873 provided for oyer and terminer courts. See COURT, COUNTY; STATE JUDICIARY. Reference: State Constitution in F. N. Thorpe, *Federal and State Constitutions* (1909). T. N. H.

COURT OF PROBATE. Public officers having jurisdiction over the probate of wills, the administration of decedents' estates and supervision over the property of minors and other wards. In England, until the middle of the nineteenth century, jurisdiction over such matters was exercised by the ecclesiastical courts held by archbishops, bishops and other ordinaries. In the American colonies probate jurisdiction was at first vested in the governor and council, but during the seventeenth century became a function of county administration in Massachusetts and other colonies.

In most of the states probate administration is vested in county officials. Where a regular system of county courts (*see* COURT, COUNTY) has been established, they are usually given such jurisdiction (as in Illinois), and in some states probate administration is the only function of such courts. Many of the states have established special probate courts in each county, sometimes in addition to the county courts, as in New York, New Jersey and the larger Illinois counties. In New York and New Jersey the probate judges are called surrogates, and the courts are known as surrogates' courts (*see* COURTS, SURROGATES'); in Pennsylvania, Delaware and Maryland probate courts are called orphans' court; and in Georgia the ecclesiastical title of ordinary has been revived. In Connecticut, Rhode Island and Vermont, probate jurisdiction is vested in town officers, or in special districts smaller than a county.

In some of the southern and western states, probate jurisdiction is vested in circuit and district judges elected in districts including several counties.

See COURT, ORPHAN'S; COURTS, SURROGATE'S; ORDINARY; STATE JUDICIARY.

Reference: S. E. Baldwin, *Am. Judiciary* (1905), ch. xv. JOHN A. FAIRLIE.

COURT OF QUARTER SESSIONS. The quarterly session of the justices of the peace in each county, which in England exercises jurisdiction in criminal cases and formerly acted as the administrative authority of the county. The same arrangements were established for a time in the American colonies, and continued in the southern states until the Civil War. A similar system still prevails in some of the southern states (*see* COURT, COUNTY); and in Pennsylvania the sessions of the local courts of original jurisdiction for the trial of criminal cases, the creation of local districts and the granting of liquor licenses are called quarter sessions. See COUNTY COMMISSIONERS; COUNTY GOVERNMENT. References: S. and B. Webb, *English Local Government, the Parish and the County* (1906), Bk. ii, chs. 4–6; G. E. Howard, *Local Constitutional History* (1889). J. A. F.

COURT OF RECORD. A regularly organized tribunal, proceeding according to the common law, keeping a permanent record of its proceedings, and generally having the power to fine and imprison for contempt.

H. M. B.

COURT, ORPHANS'. In New Jersey, Pennsylvania, Delaware and Maryland the probate of wills, the administration of decedents' estates and supervision of minor heirs is vested in orphans' courts. Their jurisdiction and powers are similar to those of probate courts in other states. See COURTS OF PROBATE. References: *Bouvier, Law Dictionary* (1897), II, 561; *Words and Phrases* (1904), VI, 5068.

J. A. F.

COURT, POLICE. Police courts in American cities are of two types. In some there are municipal courts with magistrates who are either appointed by the mayor or elected by popular vote. In others the police courts are merely the lowest tribunals in the hierarchy of regular state courts, with justices appointed in the same way as for other courts.

New York City affords a good example of the first type; Boston an equally good illustration of the second. In New York City there are, for matters of criminal jurisdiction, two boards of police justices, the members of which are appointed by the mayor for ten-year terms. One of these boards is assigned to the boroughs of Manhattan and the Bronx, the other to the boroughs of Brooklyn, Queen's and Richmond. In Boston there is one justice for each municipal court district, appointed by the governor of Massachusetts with the concurrence of the governor's council. The appointments are for life or during good behavior

The jurisdiction of police courts is usually limited to the summary trial of minor criminal offenses, ordinarily without a jury, but sometimes with a jury in case the accused elects to be so tried. There is always the right of appeal to the appropriate higher tribunal. In addition, the police courts have ordinarily the power to hear in the first instance and to commit for trial by a higher court in the case of serious crimes.

On the whole the administration of police justice in larger American cities has not been very satisfactory, and this has been, in the main, the result of ill-advised methods in the

selection of police justices or magistrates. Local executive appointment and local election of police judges have not proved dependable methods of securing men of sound judgment, fair-mindedness and integrity. State appointment, which is the rule in New England, has better served the public interest in this direction. The police courts ought to be regarded as an integral part of the whole municipal police system, and if they are to be efficient must be given that immunity from the influence of political pressure which the proper administration of a police department demands. Lack of public confidence in the work of the municipal courts, particularly when magistrates are elected, has resulted in a policy of permitting appeals almost without any restriction. This, in turn, has impaired the prestige and importance of the lower courts, while, on the other hand, it has clogged the dockets of the higher tribunals and thereby served to slow down the whole machinery of justice.

See COURT, APPELLATE; COURT, JUVENILE; LEGAL PROCEDURE, REFORM OF; STATE JUDICIARY; VAGRANCY.

References: A. C. Train, *The Prisoner at the Bar* (1906), ch. iv; C. R. Henderson, Ed., *Reform and Criminal Law* (1910). W. B. M.

COURT, PRIZE. See PRIZE LAW AND COURTS.

COURTESY OF THE SENATE. See SENATE, COURTESY OF.

COURTS AND TRIBUNALS, ADMINISTRATIVE

Definition.—The term "administrative court" is unknown to the English or American law, although tribunals to which the term might well be applied may be found in the history of the English law, and are capable of distinction in the existing American political system, as well in the state as in the National Government. An administrative court may be defined as a tribunal discharging judicial functions whose jurisdiction is confined to controversies arising between the authorities or officers of the government and between such officers or authorities on the one hand and individuals on the other. The jurisdiction of these courts may be general, *i. e.*, these tribunals may have the power to entertain appeals from any action of all or certain classes of government officers; or it may be special in character, *i. e.*, it may embrace the power to entertain appeals from certain decisions of certain administrative officers. Finally, it may be be said that this jurisdiction may be confined to questions of law or of fact or may extend to both these classes of questions. As a general thing, however, the jurisdiction of administrative courts is special in character and extends to questions both of law and fact.

It is sometimes extremely difficult to distinguish an administrative court from an administrative authority which has the power to entertain appeals from a subordinate administrative authority, but as a general thing it may be said that a tribunal is unquestionably to be regarded as an administrative court when its members may not be summarily removed by the executive and when its orders and judgments are capable of immediate execution without being subject to review by any but a judicial authority of the same character.

Because of the difficulty of setting forth in a way which is not capable of being misunderstood, the characteristics of what are popularly termed administrative courts—legally speaking, it is doubtful if any such class of courts are capable of differentiation—it will perhaps be advisable to confine the further consideration of the subject to some of the concrete examples of these bodies which are exhibited by particular political and legal systems.

French Tribunals.—The term "administrative courts" in the form of *tribunaux administratifs*, like the term "administrative law," originated in France. The peculiar application given in France just after the Revolution, to the doctrine of the separation of powers, had for its effect the denial of the right of the ordinary courts to interfere with the exercise by administrative officers of what the latter regarded as their powers. For the protection of the individual against the arbitrary and unauthorized action of subordinate administrative officers and authorities, all that was left was the power to appeal to their administrative superiors. This appeal was, in France, capable of an extended development, because of the highly centralized character of the French administrative system. In the course of the nineteenth century there were provided by statute boards or councils by the side of the most important administrative officers. To these bodies was given the right to hear these appeals which could with difficulty be distinguished from mere administrative appeals.

The two most important councils of this character were and are the council of state which is placed by the side of the president of the republic and the ministers of state, and the council of the prefecture placed by the side of the prefects in the great administrative districts called the "departments" into which the country has been divided. The members of both of these councils are learned in the law, are appointed and may be summarily removed

by the President and, in addition to hearing appeals from the actions of subordinate administrative officers and authorities, are engaged in the work of active administration mainly through the giving of advice to the administrative officers by whose side they are placed. The jurisdiction of the lowest administrative court, the council of the prefecture, is theoretically a limited jurisdiction, *i. e.*, it extends only to those cases which have been specifically mentioned in the statutes, but these statutes cover such a wide field that the jurisdiction is actually a very extensive one. In case of a matter not included in a statute, the only instance of appeal is to the council of state. This tribunal is in the first place an appellate administrative court to which appeals from the decisions of the councils of the prefecture and the other special administrative courts may be taken. In the second place it is a court of original jurisdiction and in this capacity acts in two classes of cases. In the first place resort may be had to it in a very limited and almost negligible class of cases where the decision attacked is that of a minister of state; in the second place it has a peculiar jurisdiction of its own, known as the jurisdiction in case of excess of powers or of violation of the law. The council of state may, as a result of the exercise of this jurisdiction, quash the act of any administrative authority, because that act has been in excess of the powers of the authority taking it or because the formalities required by the law for the doing of an administrative act have not been observed.

It will be noticed from what has been said of the French system that what are often spoken of as administrative courts are not clearly differentiated from the general administrative system. Thus the members of these so-called courts do not have the judicial tenure and they perform duties connected with active administration. At the same time the procedure before them while less formal than that of the ordinary courts, has still most of the guaranties of judicial procedure, and the courts themselves have frequently the right to review the exercise of discretion and the determination of questions of fact by administrative officers. For these reasons they probably offer to the individual a protection of his legal rights which is in some respects more effective than that accorded to him under any system which has been devised elsewhere for his protection. While theoretically the French administrative courts have jurisdiction only of questions of administrative law, special laws have conferred upon them the jurisdiction of all cases of government liability whether based upon contracts or torts, and the recent decisions of the highest French administrative court, *viz.*, the council of state, recognize a wider liability upon the part of the Government for the tortious acts, particularly those due to negligence, of government officers than is recognized in most other countries.

American Administrative Courts.—While in France the tribunals spoken of as administrative courts had their origin in the denial of the power of the ordinary courts to interfere with the administrative authorities in the interest of the protection of individual rights against invasion by such authorities, such administrative courts as have developed in the United States have arisen for the most part from the necessity of forming courts, the judges of which should have special knowledge of particular classes of questions.

Originally the English law made no distinction between judicial and administrative bodies. All government authorities were subject to the supreme power of the Crown. Some were superior to others and some, which came to be called courts, were placed in a protected position over against the Crown by the Act of Settlement of 1701. By this act the members of these bodies were given a judicial tenure in that they could be removed from office by the Crown only upon the address of both houses of Parliament.

Just as in France because of their origin, we find the so-called administrative courts so closely associated with the general administrative system that they can with difficulty be distinguished therefrom, so in the United States we find the judicial bodies entrusted with jurisdiction of special classes of administrative cases so closely connected with the ordinary judicial system as almost to form a part thereof. Indeed, in most cases, their decisions are not final but appeal may be taken from them to the supreme judicial court. The members of these bodies also often have the same tenure as have the ordinary judges.

Examples of such administrative courts in the system of National Government are: (1) The court of claims (*see*) which has jurisdiction of claims against the government based upon a contract express or implied and upon a law of the United States or a regulation of an executive department but no jurisdiction over claims based upon the tortious acts of government officers. Since the establishment of the court of claims, similar jurisdiction to that possessed by it has been conferred upon the lower courts of the United States. Finally, appeals from the decisions of the court of claims and of the lower courts of the United States, acting as courts of claims, may be taken to the Supreme Court. (2) The court of customs appeals (*see*). This court has recently been established for the purpose of deciding controversies of a legal character arising in connection with the administration of the customs laws. Its decision is in most cases final, and its jurisdiction is exclusive. (3) The commerce court (*see* COURT, COMMERCE). This court was established in order to provide a special judicial control over the acts of the

Interstate Commerce Commission (*see*). Its jurisdiction was exclusive, but its judgments or decrees were reviewable in the Supreme Court. In most of the cases which were appealed to it in the course of the first year of its existence, the Commerce Court decided against the rulings of the Interstate Commerce Commission. But in the first case appealed from the Commerce Court to the Supreme Court, its decision was reversed and that of the Interstate Commerce Commission sustained. An effort toward its abolishment was made in 1912 but was frustrated by President Taft's veto. It was finally abolished on December 31, 1913, by a rider to an appropriation act approved by President Wilson on October 22, 1913.

In the states one seldom if ever comes across so well defined administrative courts as those to be found in the government of the United States. There are, it is true, sometimes to be found bodies spoken of as tax appeal courts, which have jurisdiction of controversies with regard to assessments for the purposes of taxation but as a general thing, they do not act finally, particularly in the case of questions of law, and are with difficulty distinguishable from administrative authorities, which have the power to entertain appeals from specific administrative acts.

What judicial control exists over administrative action in the United States is generally exercised by the ordinary courts through their equity jurisdiction, the issue of particular legal writs such as the mandamus, certiorari, quo warranto or habeas corpus, or by special statutory remedies in the nature of appeals.

In the exercise of their powers over administrative officers, the United States courts are reluctant to interfere with administrative discretion except in so far as concerns the jurisdiction of the officer taking the action complained of. This attitude is due to the general theory of the law that the exercise of a discretionary power granted by law to one authority may not be interfered with by another. This attitude of the courts has two rather dissimilar and equally unfortunate effects. In the first place the decision of an administrative authority upon a question of fact even if based on expert advice, may be overturned in a subsequent collateral proceeding brought against an administrative officer, where the jurisdiction of that officer depended upon the existence of the fact and this action of the court in overturning the decision as to the fact with the consequent result of leaving the officer without jurisdiction may be made as the result of the verdict of a jury. For example, a health officer may destroy certain property which after expert examination he may determine to contain bacteria detrimental to health. The person whose property is so destroyed may subsequently sue the officer for trespass, and if he can prove to the satisfaction of a jury that the bacteria alleged were not present, the health officer having acted without jurisdiction may be mulcted in damages. Such a possibility will and does have the effect of paralyzing the activities of administrative officers.

In the second place the courts seldom interfere in any way with the discretion of administrative officers, no matter how unwisely, arbitrarily, or even oppressively it may have been exercised, when the question of jurisdiction is not involved. Thus tax assessors, in the absence of some statute subjecting the exercise of their discretion to judicial control, may put any value for the purposes of taxation they see fit on a piece of property, or they may assess it at a higher rate than similar property on the same assessment roll, and no appeal to any other authority is, in the absence of statute to that effect, possible.

Sometimes statutes have been passed extending the powers of courts in these cases and sometimes special tribunals have been provided for the hearing of appeals from such administrative acts. The ordinary courts are, however, so taken up with ordinary litigation that they are unable to give these administrative cases proper attention, while the special tribunals which have been provided in the United States do not have sufficient guaranties of impartiality and intelligence to cause them to be regarded as satisfactory.

The special administrative courts like the French courts have, however, succeeded in developing a system of remedies which are at the same time an effective means of protecting private rights and do not hamper so seriously administrative discretion as to make administrative action inefficient. These courts are special in character, that is, their members have special knowledge and experience and know how to protect the rights of the individual at the same time that they do not permit the exercise of those rights to interfere with the real needs of the administration.

See Administrative Decisions; Administration in Europe; Courts, Federal; Interior, Department of; Law, Administrative; Law, Constitutional, American; Public Officers; Separation of Powers.

References: F. J. Goodnow, *Comparative Administrative Law* (1893), II, 200–256, *Selected Cases on the Law of Officers* (1906); B. Wyman, *Principles of Administrative Law Governing the Relations of Public Officers* (1903); L. Aucoc, *Conferences sur l'Administration et le Droit Administratif* (1882–1886), I, 370–692; E. Freund, *Cases on Administrative Law* (1911); M. Hauriou, *Précis de Droit Administratif* (1907), 795–840; R. Gneist, *Das Englische Verwaltungsrecht* (1883–1884); E. L. J. Laferrière, *Traite de la Jurisdiction Administrative*; C. A. Beard, *Readings in Am. Government and Politics* (1911) 202–5.

F. J. Goodnow.

COURTS AND UNCONSTITUTIONAL LEGISLATION

Marbury vs. Madison.—A distinctive American institution of government is the power exercised by the courts to declare an act unconstitutional as beyond the competence of the legislature. It is not an easy matter to account for this principle. In the famous case of Marbury *vs.* Madison (*see*), in 1803, Justice Marshall reached the conclusion that it was the duty of the court to declare a law of Congress unconstitutional and void and he did so by resorting to a line of reasoning which was forcible but perhaps not in all respects entirely conclusive. His argument was practically to the effect that the Constitution is a law, a fundamental law, springing from the people and binding on the legislature and all departments of government. It is, therefore, the duty of the courts to recognize that law and not to recognize a congressional enactment at variance with it; this duty devolved upon the court because of the existence of a written constitution (*see* LAW, CONSTITUTIONAL, AMERICAN.) It should be pointed out that, forcible as this reasoning is, and though we should fully accept the doctrine that the Constitution must govern and that the legislature has no authority to transcend the limits of the Constitution, it does not necessarily follow simply from the existence of a written constitution that the courts are possessed of this extraordinary power, for it might with considerable cogency be asserted that under a written constitution the legislature, entrusted with the duty and responsibility of legislation, must have the power and the duty of passing ultimately and finally upon the extent of its own authority.

In the assertion, therefore, that the courts have this power, we see in reality more than the principle that the Constitution is binding or even the principle that the Constitution is law in any indefinite sense; we see the principle that it is law in the sense that it can be enforced in courts and enforced by a refusal to recognize legislative determination as final. In other words, the principle to be accounted for is not alone that written constitutions are binding upon governments, but that courts can enforce the written constitution as law and, in doing so, use in large measure the simple and well-worn principles by which courts determine what the law is. Justice Marshall, by a method of reasoning which was not uncommon in his decisions, put the matter thus:

> Those, then, who controvert the principle that the Constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the Constitution, and see only the law.

Marshall also, in addition to his general reasoning from the existence of a written constitution, referred to the fact that the judicial power of the United States is extended to all cases arising under the Constitution; and inferred from this the duty of the courts to pass upon the validity of legislation. Here, again, the argument has force but has not appealed to all persons as conclusive and sound. He might, perhaps, have wisely referred also to the fact that the Constitution declares that the Constitution, laws of the United States and treaties are the supreme law of the land. It is true that when this clause was adopted by the framers of the Constitution, they had in mind chiefly, and possibly solely, the state courts and state judges; they intended to make clear the obligation to disregard a state constitution or state act violating the Constitution, laws or treaties of the United States. And yet it may, with some force, be said that if the state courts must consider the Constitution as law enforceable in courts, anything in the constitution or laws of any state to the contrary notwithstanding, the federal courts could scarcely refrain from considering it, even to the extent of pronouncing a congressional act invalid.

Earlier Announcements by Federal Courts.—This case of Marbury *vs.* Madison is of importance as containing the first formal announcement by the Supreme Court that the courts possessed and could exercise this extraordinary power. But even in the history of the federal courts there was some background for the assertion. One of the lower courts had before this time refused to consider congressional enactments as legal ("The First Hayburn Case," *American Historical Review*, XIII, 281). In 1800 Justice Chase, giving his opinion in Cooper *vs.* Telfair (4 *Dallas* 14, 19) said:

> It is, indeed, a general opinion, it is expressly admitted by all this bar, and some of the judges have, individually in the circuits, decided, that the Supreme Court can declare an act of Congress to be unconstitutional, and therefore, invalid; but there is no adjudication of the Supreme Court itself on the point. I concur, however, in the general sentiment.

We should not gather from this statement by Chase, however, that then or even after Marshall's decision (1803) there was complete acquiescence in the principle.

Ambiguities of the Federal Constitution.—It is plain from what has already been said that the Constitution of the United States does not plainly, and without ambiguity grant such power to the federal courts if it grants the power at all. Though an argument of considerable cogency can be made to rest upon the general nature of the Constitution as well as upon some of its distinct provisions, the result is a conclusion resting upon argument and not

a conclusion dependent upon a plain statement of the power. An examination of the debates in the Federal Convention, moreover, leaves one still in some uncertainty as to whether the framers of the Constitution distinctly intended to bestow such power. If they did so intend, that fact does not entirely answer the inquiry of the person who would know the beginning and the source of this principle of the American constitutional system; one will still be led to inquire how the framers of the Constitution hit upon such a principle, and he will not content himself with thinking that they discovered it or created it by virtue of abstract thinking.

Announcement by State Courts.—The principle we are examining was first announced by state courts in considering the validity of state legislation. This is an important fact, for there is no need of seeking in the state constitutions any words that by a process of reasoning could be held to bestow such authority on the state judiciary. If the investigator should reach the conclusion that this power was expressly granted to the federal courts by the Constitutional Convention of 1787, he surely could not assert that a similar power was expressly granted to the state courts by their constitutions; and yet, as a matter of fact, as said above, the power was first exercised by the state courts. Such authority in the state courts had, therefore, to rest upon a general consideration of the nature of the state institutions and of the sources of legislative authority.

The first, and perhaps the most important of the state cases, was Holmes *vs.* Walton, decided in New Jersey in 1780. Other cases in which this matter was discussed are Commonwealth *vs.* Caton (1782, 4 *Call, Va.* 5), Bayard *vs.* Singleton (1787, 1 *Martin, N. C.* 42), Trevett *vs.* Weeden (1786, Thayer, *Cases on Const. Law,* 73, *R. I.*). In the New Jersey and the North Carolina cases the court appears to have acted upon the the principles we are considering. The Rhode Island case rests in some obscurity; but there is no doubt that at the time the judges were believed to have refused on constitutional grounds to recognize a legislative enactment as valid and binding. In the Virginia case the power of the court was frankly stated, and a resolution passed by one house of the legislature was disregarded. Whatever may be said of the distinct position of the courts in all these cases, there is no doubt that the matter was discussed and that the judges pondered their obligations. Reference should also be made to the case of Rutgers *vs.* Waddington, Pamph. 1784, 416, a New York case, which, however, was not a distinct precedent.

Source in American Political Philosophy.—It is interesting now to notice that in Bayard *vs.* Singleton the judges referred to a fundamental idea which in its form of statement is probably traceable to Vattel (*Law of Nature and Nations,* Bk. I, ch. iii, § 34) "In short," says Vattel, "it is from the constitution that these legislators derive their power: how then can they change it, without destroying the foundation of their own authority?" "No act," the court is reported to have said, "they [the legislature] could pass, could by any means repeal or alter the Constitution, because if they could do this, they would at the same instant of time destroy their own existence as a Legislature and dissolve the government thereby established." The use of this form of statement strongly suggests not only the reasoning of Vattel, with whom the men of the time were conversant, but the reasoning of the American Revolution. Vattel is directly quoted by Otis in his most famous and widely-read pamphlet. The same principle is stated in the *Circular Letter* of 1768, sent out by the Massachusetts representatives, which was doubtless well known by every man interested in American politics of the day: "That in all free states the Constitution is fixed; and as the supreme legislative derives its Power and Authority from the Constitution, it cannot overleap the Bounds of it without destroying its own foundation." Such assertions were made over and over again. We see, therefore, the connection between this power of the courts and the development of constitutional principles during the contest with Engalnd. It is true that the line of Revolutionary reasoning pointed chiefly only to evident limits on legislative power and not distinctly to the authority of the courts to insist upon those limits; but no one can go through the American arguments in the revolutionary period without being assured that the notion, that an act contrary to natural justice or contrary to constitutional restriction was void, would inevitably be taken up by the courts, and taken up as a fundamental principle and duty. Moreover, the doctrine which permeated American legal thinking was that *no one* was bound by an act beyond the competency of the legislature.

An understanding, therefore, of the establishment of this American institution requires an appreciation of the philosophy of the American Revolution and this takes us back to Vattel and to the English political philosophers of the seventeenth century. It is worth noticing that in the cases already referred to the boundaries between two lines of thinking are not strictly and clearly drawn; on the one hand was the principle that the legislature could not disregard natural justice or encroach upon the reserved *natural rights* of the individual; on the other was the principle that the courts and the legislature were bound by a *superior law* and must not disregard its plain mandates. Historically speaking, these two principles were near neighbors; the orators and pamphleteers of the Revolution, when insisting upon constitutional restraints, had the first chief-

ly in mind; but the second was used also, and there was little conscious recognition of any logical difference between the two. This fact can be seen only when we realize that the colonists had contended that principles of natural justice were, in effect, law.

This all means—the appearance of the principle and power in the state courts with the forms of reasoning on which it is based—that the power of the courts and their attitude toward legislation take their root in the fundamental political thinking of the generation of the Revolution; this institution like others—like the fundamentals of the common law so far as they are part of constitutional law—is a product of past conditions and peculiarly a product of the political philosophy of the American Revolution. It can not be accounted for by simply pointing to a clause in a constitution, but by recognizing its origin in history; we account for it as we account for other fundamental notions—for example, the principle that an officer is individually responsible for his trespasses, a principle that underlies and permeates our constitutional system. These ideas and theories came from the experiences of the nation; they constitute, in reality, the spirit of the body of the *unwritten* constitution without which the written constitution would be mere formality or only words.

Of course, in addition to this fundamental political reasoning, we must remember the character of colonial institutions, the fact of written charters in some of the colonies which were restrictions on legislative power, the existence of an external authority—that of the mother country, which could and did hold colonial acts invalid—the devotion of the men of the Revolution to the principle of the separation and independence of coördinate departments of government. All these facts doubtless help to form the background of the power of judicial review.

Duty of all Courts.—It is not uncommon to speak of the Supreme Court of the United States as the peculiar possessor of this authority and duty. But a moment's reflection will indicate that any court, once the principle is accepted, is logically under obligation to refuse to recognize an unconstitutional law. Moreover, the principle is seen clearly in the refusal of a state court to recognize as valid an act of a state legislature transcending, in the opinion of the court, the limits of legislative authority, and this because the state constitution is a law springing from the people and superior to legislative enactment.

Instances.—The courts of the state have so commonly exercised this power that comment is scarcely necessary. It is sometimes forgotten, however, that up to the Civil War in only two instances did the federal Supreme Court declare a law of Congress void—Marbury *vs.* Madison in 1803 and Dred Scott *vs.* Sanford in 1857. Since the Civil War the Supreme Court has on several occasions pronounced acts void.

Principles Followed by the Courts.—The federal court has always acted with great caution in the exercise of this power. Possibly the same thing can be said of the state courts, although there often appears in actual practice to be greater freedom or less restraint. The rules which the courts will customarily follow with reference to the exercise of this power of passing on the validity of legislation are given briefly in another article (*see* LAW, CONSTITUTIONAL, AMERICAN).

Criticism.—There has been, in recent years, much discussion concerning the value of this power. It is often said that it results in unwise and unnecessary restraint upon legislation and in preventing the people from obtaining laws that modern social conditions demand. It is asserted that judges, not in sympathy with modern social tendencies, insist on giving rigid effect to constitutional limitations or to conceptions of personal and individual right, which they consider are established or protected by the Constitution. There probably will continue to be differences of opinion on this matter; but it can safely be said that courts, while not consciously disregarding precedent, are influenced by current conditions and current public opinion, and that in the development of the modern doctrine of the police power (*see*) they have come to recognize the right of the legislatures to pass legislation which, though it may affect individual freedom, is conducive to public welfare and convenience. The complaint concerning the power of the courts would appear often to be little short of an objection to the whole principle of a rigid constitution.

See DUE PROCESS OF LAW; EXECUTIVE AND JUDICIARY; JUDICIAL POWER, THEORY OF; LAW, CONSTITUTIONAL, AMERICAN.

References: W. M. Meigs, "The Relation of the Judiciary to the Constitution" in *American Law Review*, XIX, 175–203; Brinton Coxe, *Judicial Power and Constitutional Legislation* (1893); J. B. Thayer, *Origin and Scope of the American Doctrine of Constitutional Law* (1893); E. S. Corwin, "Establishment of Judicial Review" in *Michigan Law Review*, IX, 102–125, 283–316; H. L. Carson, *The Supreme Court of the United States, Its History* (1892), 202–209; A. Scott, "Holmes *vs.* Walton, The New Jersey Precedent" in *Am. Hist. Review*, IV (1898), 456–469; M. Farrand, "The First Hayburn Case" in *Am. Hist. Review*, XIII (1908), 281–285; S. E. Baldwin, *Am. Judiciary* (1905), ch. vii; C. A. Beard, *Readings in Am. Government and Politics* (1911), ch. xv, *The Supreme Court and the Constitution* (1912); A. C. McLaughlin, *The Courts, the Constitution, and Parties* (1912); C. G. Haynes, *Conflict over Judicial Power* (1909).

ANDREW C. MCLAUGHLIN.

COURTS, FEDERAL, JURISDICTION OF

The Judicial Department.—Under the Articles of Confederation (*see*) no provision was made for a federal judiciary, although Congress was authorized to provide courts for the trial of piracies and felonies on the high seas and also prize courts (Art. of Confed. Art. IX) (*see* COURT OF APPEALS IN CASES OF CAPTURE); but under the Constitution three departments of government were provided for, the third of which was the judiciary, to consist of one supreme court and such inferior courts as Congress might from time to time ordain and establish (Art. III, sec. i), and Congress was given power "to constitute tribunals inferior to the Supreme Court" (Art. I, Sec. viii, ¶ 9). From the American principle of independence of the departments of government (*see* SEPARATION OF POWERS; LAW, CONSTITUTIONAL, AMERICA), it follows that within the scope of judicial power neither the legislative nor the executive department can interfere with the action of the judiciary nor impose upon the courts or their judges the duty to exercise functions not judicial. On the other hand, the judiciary cannot interfere with the legislative and executive departments in the exercise of their political or discretionary powers (*see* LUTHER VS. BORDEN; MARBURY VS. MADISON.) The judiciary is limited to the determination of cases and contoversies presented to it and considered by it in accordance with the forms of judicial procedure (*see* JUDICIAL PROCEEDINGS), and under the Federal Constitution has no such authority as it conferred on the judiciary in some of the states to act in an advisory capacity (*see* ADVISORY OPINIONS). But in determining judicial cases and controversies it may be necessary to pass upon the validity of legislative or executive action (*see* COURTS AND UNCONSTITUTIONAL LEGISLATION). The decisions of the federal judiciary in the interpretation of the Constitution and laws of the United States are by necessary implication a part of "the supreme law of the land" (Art. VI, ¶ 2).

Extent of Jurisdiction.—The scope of the jurisdiction of the courts provided for in the Constitution is very specifically prescribed:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the laws of the United States, and Treaties made, or which shall be made, under their Authority, to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States, between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects (Art. III. Sec. ii, ¶ 1).

The terms "cases" and "controversies" seem to be distinguishable only in this, that "cases" include criminal prosecutions, while "controversies" are civil suits. Either term implies litigation before a court as to rights of property or person. The distinction existing from early times in the jurisdiction of the English courts between law (*see* LAW, COMMON) and equity (*see*) is recognized and perpetuated for the federal courts, although in many states it has been to a greater or less degree obliterated; but both forms of jurisdiction are vested in the same courts, the difference between the two methods of procedure being preserved only as to rights and remedies. In criminal cases (*see* LAW, CRIMINAL), and civil cases at common law (as distinct from equity) trial must be by jury (Art. III, Sec. ii, ¶ 3 and Amendment VII). The equity practice is by statute uniform in the federal courts throughout the United States and is regulated by rules of the Supreme Court, the latest revision of which was made in 1912.

The cases and controversies referred to are placed within the jurisdiction of the federal courts either on account of the nature of the subject matter or the nature of the parties (*see* COHENS VS. VIRGINIA). A more logical division, however, is into cases and controversies involving an essential jurisdiction in some department of the Federal Government and those involving only an expedient jurisdiction. It is manifestly essential to the efficiency of a national government that its judiciary have the power to interpret its constitution, laws, and treaties, decide cases affecting the rights of those who represent foreign governments, administer the admiralty and maritime jurisdiction, and decide the controversies to which it shall be a party; while it is a matter of expediency only that controversies to which a state or citizens of different states or foreign states or subjects are parties, may be determined in the federal courts in order that the tribunal before whom they are tried be free from the imputation of local prejudice or influence.

The federal judiciary has only a limited jurisdiction, while the judiciary of a state has general jurisdiction; that is to say the courts which constitute the judicial department of a state are presumed to have all judicial power subject only to such limitations as are found in the Constitution and laws of the state or result from the supremacy of the Federal Government and the limitations in its constitution, while the courts of the United States are limited in their jurisdiction: first, by the fact that the Federal Government itself is one of delegated powers with the result that none

of its departments can be authorized to exceed the powers expressly or by implication conferred upon it; and, second, because the jurisdiction of any particular court created by Congress can not exceed that which Congress sees fit to confer upon it. The jurisdiction of the Supreme Court provided for by the Constitution is necessarily limited by the specific terms of that instrument. In any case brought before a Federal court the grounds on which its jurisdiction is invoked must be made to appear. But within the scope of their jurisdiction the authority of the federal courts is superior to that of the state courts or to that of any other department of the state government, and, in any case of conflict in jurisdiction, the decision of a federal court having jurisdiction must prevail; and its decision as to the existence of jurisdiction in a particular case is binding on the state courts as to that case.

Concurrent Jurisdiction of Federal and State Courts.—Congress has never attempted to confer upon the courts of its creation all the jurisdiction which might be exercised by the judicial department of the Federal Government. Many cases, which might under the judiciary article have been placed within the jurisdiction of the federal courts on account of the subject matter or the parties, remain triable only in the state courts; and many other cases which might be triable in the federal courts, if there brought, may still be tried in the state courts if there first instituted. Only in those cases in which by the Constitution or laws of the United States jurisdiction is expressly or by implication limited to the federal courts is such a jurisdiction exclusive.

As the authority of the state courts is not derived from the Federal Constitution but only limited by it, Congress cannot confer jurisdiction upon such courts; but it has been deemed competent for Congress to delegate to state courts or state judges the performance of certain functions as commissioners which are not in their nature strictly judicial and do not involve the trial of cases, such as the power to take affidavits, to issue warrants for the arrest and commitment of offenders against the federal laws, and to naturalize aliens.

Methods of Exercising Jurisdiction.—The original jurisdiction of the federal courts, that is the jurisdiction to try cases brought into such courts for original determination, may be invoked in two ways; first, by service of process in accordance with the forms prescribed by law, and second, by removal from a state court of cases first there instituted which are within the scope of the federal judicial power. Such removal can only be had when provided by federal law. The appellate jurisdiction of the federal courts may be exercised by appeals from one federal court to another as Congress may authorize and also by appeals taken from decisions in state courts to federal courts in cases involving subject matter or parties of such character as to bring them within the general jurisdiction authorized by the judiciary article of the Constitution. Such appeals must be provided for by federal law. In the exercise of their jurisdiction the federal courts will determine the law applicable to the decision of the case whether it be federal law or state law; for the question of jurisdiction involves the authority to determine the case before it whatever may be the right involved.

See COHENS VS. VIRGINIA; COURTS AND UNCONSTITUTIONAL LEGISLATION; COURTS, FEDERAL, SYSTEM OF; ELEVENTH AMENDMENT; FEDERAL QUESTION; JUDGES, FEDERAL; JURISDICTION; LAW, ADMINISTRATION OF, BY COURTS; SEPARATION OF POWERS; STATES AS PARTIES TO SUITS.

References: As to the necessity for a Federal Judiciary, *The Federalist,* Nos. 32, 80–82 (Lodge's ed., 1888), 132, 494–516. General description of jurisdiction, J. Story, *Commentaries on the Constitution of the U. S.* (1833, 5th ed., 1891), §§ 1573–1795; W. W. Willoughby, *Constitutional Law of the U. S.* (1910), II, 970–998; B. R. Curtis, *Jurisdiction of United States Courts,* (2d ed. by Merwin, 1896); Hannis Taylor, *Jurisdiction and Procedure of the U. S. Supreme Court* (1905); J. R. Tucker, *Constitution of the U. S.* (1899) II, 753–820. Significant early cases, Martin *vs.* Hunter's Lessee (1816), 1 *Wheaton* 304; Cohens *vs.* Virginia (1821), 6 *Wheaton* 264.

EMLIN MCCLAIN.

COURTS, FEDERAL, SYSTEM OF

History of Legislation.—Under the authority to constitute tribunals inferior to the Supreme Court which should exercise the judicial power provided for in the Constitution (Art. III, Sec. i) (*see* COURTS, FEDERAL, JURISDICTION OF) Congress proceeded in 1789 to pass a judiciary act creating districts, in each of which a district judge should be appointed, authorized to hold a district court, and creating, also, circuits each including two or more districts, in each of which a circuit court was provided for to be held in each district by two justices of the Supreme Court and the district judge of the district in which the court was held. In 1801 this plan of organization was changed by providing for the appointment for the circuit of a judge to hold the circuit court in each of the districts com-

posing the circuit; but in 1802 the office of circuit judge was abolished and it was provided that the circuit courts should be held by the justices of the Supreme Court assigned to the circuits respectively and the district judge of the district. In 1869 provision was again made for circuit judges, one in each circuit, authorized with the justice of the Supreme Court assigned to the circuit and the district judge of the district in which the court was held to hold circuit courts in the various districts. Subsequently provision was made for two or more circuit judges in each circuit. In 1891 a circuit court of appeals was created for each circuit, to be held by the circuit judges sitting together, with the addition, if necessary, of a district judge designated for the purpose. This court was authorized to exercise appellate jurisdiction only, by hearing appeals from district courts and circuit courts of the United States, such jurisdiction embracing a portion of the appellate jurisdiction previously vested in the Supreme Court. By the Judicial Code, enacted March 3, 1911 (36 Stat. U. S., 1087), the circuit courts were abolished, and the jurisdiction of the district courts were enlarged to cover the original jurisdiction previously exercised by the circuit court.

Other Courts Exercising Federal Power.—Under authority to provide for the government of the District of Columbia, the territories and the territorial possessions of the United States, to regulate relations with foreign governments, and to exercise other powers delegated to it, Congress has provided for many other courts described under appropriate titles which need not here be specifically enumerated. These courts are not the courts referred to in the judiciary article of the Constitution (Art. III), and their jurisdiction is not limited to that specified in such article. They exercise the powers conferred upon them by Congress and their judges are appointed as Congress may provide. (See COURT, COMMERCE; COURT OF CLAIMS; COURT OF CUSTOMS APPEALS; DISTRICT OF COLUMBIA.)

Organization of Courts.—The territory of the United States embraced within the limits of the various states is divided into districts, each consisting of the territory of a state or a portion of a state and circuits composed of many districts. At present there are nine circuits, the number corresponding to the number of justices of the Supreme Court, each of which is assigned to a circuit. Under the new Judicial Code the federal courts vested with jurisdiction under the judiciary article of the Constitution consist of: the (1) district court, which has in general original jurisdiction to try causes and appellate jurisdiction in one class of cases over United States commissioners; (2) the circuit court of appeals which exercises appellate jurisdiction only, authorized to entertain appeals from the district court in specified classes of cases and also appeals in some cases from territorial courts; and (3) the Supreme Court which exercises the original jurisdiction conferred upon it by the Constitution (Art. III, Sec. ii), and appellate jurisdiction in specified classes of cases over the district court, in other classes of cases over the circuit court of appeals, and in cases authorized by law over the courts of last resort of the states and over courts of the territories and other courts created by Congress. A district court is held in each district at one or more places by the district judge of that district or of another district, or a circuit judge assigned for the purpose. The circuit court of appeals is held at places designated within the circuit by three judges consisting of the Chief Justice or associate justice of the Supreme Court assigned to such circuit and the circuit judges of the circuit, with the addition of one or more of the district judges of the circuit assigned for the purpose if necessary. The Supreme Court is held only in the District of Columbia by the Chief Justice and the associate justices appointed to be judges of that court.

Apportionment of Jurisdiction.—The original jurisdiction conferred by law under the judiciary article (save in so far as by that article original jurisdiction is given to the Supreme Court) is vested in the district courts. The appellate jurisdiction (save in classes of cases in which appeals may be taken from United States commissioners to district courts) is divided between the circuit court of appeals and the Supreme Court. The description of these jurisdictions is complicated for the reason that aside from the original jurisdiction conferred upon the Supreme Court by the Constitution they depend upon legislative designation (*see* COURTS, FEDERAL, JURISDICTION OF). In the following paragraphs only the important branches of the jurisdiction of each court will be described.

Original Jurisdiction of District Courts.—While the jurisdiction of the district courts is enumerated in twenty-five subdivisions of one section of the Judicial Code, those which are of general interest may be grouped as follows: (1) cases arising under the Constitution or laws or treaties of the United States; (2) cases involving diverse citizenship of parties; (3) cases of admiralty and maritime jurisdiction (*see*); (4) suits of a civil nature brought by the United States; (5) prosecutions for crimes and offenses cognizable under the authority of the United States and suits and proceedings for the enforcement of penalties and forfeitures under any law of the United States; (6) cases arising under the revenue laws, postal laws, the patent, copyright and trade mark laws, laws regulating commerce, the laws for the protection of civil rights, the bankrupt laws, and the immigration laws; and (7) claims against the United States. In cases

of the first two groups and in a few cases falling within other groups original jurisdiction is acquired by the bringing of suit in the district court or by the removal to the District Court of cases instituted in state courts. In many other cases included in some of these groups the jurisdiction of the district court either on suit brought therein or on removal thereto is limited to cases involving an amount in controversy exceeding a specified limit.

(1) Few cases are of such character that they may be said to arise under the Constitution, for constitutional questions are usually incidental to the determination of cases brought for the protection of legal rights or the enforcement of legal remedies and the guaranties of the Constitution are invoked as grounds for decision in such cases with the right of appeal from the court of last resort in a state to the Supreme Court of the United States by the party who claims that these constitutional guarantees have been disregarded. Suits under the laws of the United States are multifarious, many of them being specifically conferred by other provisions as to jurisdiction of the district courts. But among those not specifically conferred are suits by or against corporations created by the laws of the United States and cases involving the validity of the action of officers of the United States in the discharge of their duties.

(2) A very important division of the jurisdiction of the district court is that given it in cases between citizens of different states or between citizens of a state and foreign states, citizens or subjects. (As to the suability of states, see ELEVENTH AMENDMENT; STATES AS PARTIES TO SUITS). Diversity of citizenship, while thus made a ground, with limitations as to amount in controversy, for original jurisdiction—either by institution of suit in or removal to the district courts in methods prescribed—(*see* REMOVAL OF CAUSES)—is not a ground for review on appeal to any federal court of final decision of a case in a state court. In determining whether there is the requisite diversity of citizenship, it has been settled that a state is not a citizen; that a corporation is a citizen of the state of its organization; and that citizens of the United States residing in the District of Columbia or in the territories or territorial possessions are not citizens of a state (*see* CITIZENSHIP IN THE UNITED STATES).

(3) The original admiralty and maritime jurisdiction now vested wholly in the district courts which are therefore also prize courts (*see* PRIZE CASES; PRIZE LAW AND COURTS) under the rules of international law is, in its nature, and by statute, exclusive of like jurisdiction in the state court (*see* ADMIRALTY AND MARITIME JURISDICTION).

(4) The United States as a sovereign may bring suit in any court in which its sovereign power is recognized but, naturally, it will resort when practicable to its own courts and it was essential that jurisdiction be conferred for that purpose on the district courts.

(5) It is also essential that prosecutions for crimes and offenses against the United States and suits for the recovery of penalties and forfeitures under any law of the United States be prosecuted in the federal courts, and jurisdiction in all such cases is vested in the district courts. But the courts of the United States have no common law jurisdiction for the punishment of crime and can only entertain prosecutions for crime defined or specified by federal law. Prosecutions for federal crimes must be instituted in the district in which the crime was committed; if committed on the high seas or elsewhere out of the jurisdiction of any particular district, the prosecution must be in the district where the offender is found or into which he is first brought. Suits for penalties and forfeitures may be brought either in the district where they accrue or in the district where the offender is found.

(6) The particular provision for cases arising under specified groups of laws of the United States need not be referred to in detail. Perhaps all the cases thus specified would have been within the jurisdiction of the district courts under the general delegation of authority to try cases arising under the laws of the United States; but in these particular classes of cases there is no limitation as to the amount in controversy and in many of them the jurisdiction of the district courts is declared to be exclusive of the jurisdiction of state courts.

(7) Recognizing the general rule that a sovereignty may not be sued in its own courts without its consent, which would exclude from both the state and federal courts any jurisdiction over suits against the United States, it has, nevertheless, been provided by Congress that claims against the United States may be prosecuted in a special court created for that purpose (*see* COURT OF CLAIMS). And further it is provided that concurrently with the court of claims the district courts may have original jurisdiction of claims not exceeding $10,000 in all cases (except cases sounding in tort) in respect to which the claimant would be entitled to redress in any court if the United States were suable. Judgments against the United States in such suits, like judgments rendered in the court of claims, are not directly enforceable as judgments but are to be satisfied by appropriations made by Congress.

Jurisdiction of Circuit Court of Appeals.—General appellate jurisdiction (*see* APPEALS) over the decisions of the district courts and over certain other courts organized under the laws of the United States is conferred upon the circuit court of appeals, in cases where a direct appeal to the Supreme Court of the United States is not provided for; and in some classes of cases the decision of the circuit court of appeals is final—as, for instance, where

the jurisdiction of the district court is dependent upon diversity of citizenship and in cases arising under the patent (*see*), copyright (*see*), and criminal laws, and in admiralty cases.

Jurisdiction of Supreme Court.—By the judiciary article the Supreme Court is vested with: (1) original jurisdiction "in all cases affecting ambassadors, other public ministers and consuls and those in which a state shall be a party;" and (2) appellate jurisdiction in all the other classes of cases enumerated in that article to which the judicial power of the United States is extended, with such exceptions and under such regulations as Congress shall make (Art. III, Sec. ii, ¶ 2).

(1) The original jurisdiction of the Supreme Court conferred by the Constitution can not be enlarged nor restricted by statute, but concurrent jurisdiction may be given in these cases to the district court, as has been done in regard to suits against consuls. By statute the original jurisdiction is made exclusive, however, in "all controversies of a civil nature where a state is a party except between a state and citizens of other states or aliens" and also of "suits or proceedings against ambassadors or other public ministers or their domestic servants." Therefore suits against a state, unless brought by its own citizens (*see* ELEVENTH AMENDMENT; STATES AS PARTIES TO SUITS), and suits by a state against another state of the Union or a foreign state are exclusively cognizable in the Supreme Court. In proceedings against ambassadors or other public ministers and their domestics or servants only such jursidiction can be exercised "as a court of law can have consistently with the law of nations," the rule of international law being that ambassadors and public ministers and their domestics or servants can not be subjected to the jurisdiction of the courts of the countries to which such ambassadors or public ministers are accredited (*see* DIPLOMACY; INTERNATIONAL LAW, PRINCIPLES OF). In the cases in which the Supreme Court entertains original jurisdiction trial by jury is guaranteed if the action is at law (*see* AMENDMENT VII).

(2) The appellate jurisdiction of the Supreme Court can only be exercised as provided by statute. It extends to decisions of the district courts involving the question of jurisdiction of that court, or the construction or application of the Constitution of the United States, or the constitutionality of any law of the United States, or the validity or construction of any treaty, and to such decisions in any case in which it is claimed that the constitution or law of a state is in contravention to the Constitution of the United States. In prize cases (*see* PRIZE LAW AND COURTS) appeals are taken directly from the district court to the Supreme Court of the United States. The appellate jurisdiction extends also to decisions of the circuit courts of appeals in cases in which the decisions of the circuit court of appeals are made final, if the Supreme Court shall require the certification to it of such decision for review or the circuit court of appeals shall certify any question of law in such case to the Supreme Court for instruction. In cases in which the judgment or decree of the circuit court of appeals is not made final by statute, an appeal may be taken to the Supreme Court where the matter in controversy exceeds $1,000. The appellate jurisdiction of the Supreme Court is also extended by statute to cover specified classes of cases in bankruptcy. It is also given appellate jurisdiction over some classes of cases in the courts of the District of Columbia, the courts of the territories and of the territorial possessions, and the court of claims.

Finally, an appeal may be taken to the Supreme Court of the United States from any decision of the court of last resort of a state in which: (1) the validity of a treaty or statute of or an authority exercised under the United States is involved if the decision is against the validity of such treaty, statute or authority; or in which (2) the validity of a statute of or authority exercised under any state is questioned on the ground of repugnance to the Constitution, treaties or laws of the United States if the decision is in favor of the validity of the state statute or authority; or in which (3) any title, right, privilege or immunity is claimed under the Constitution or any treaty or statute of or any commission held or authority exercised under the United States, if the decision is against the title, right, privilege or immunity specifically so set up or claimed. Such appeal can only be taken by the party against whom the federal question thus arising is decided and such question will be considered by the Supreme Court of the United States if found to have been necessary to a final decision of the case.

General Characteristics of Federal Courts.—In the exercise of their essential jurisdiction (*see* COURTS, FEDERAL, JURISDICTION OF) the federal courts have necessarily come into collision with the state courts and have asserted the supremacy of their power within the scope of the jurisdiction conferred upon them, of which jurisdiction they must necessarily be the sole judges, for there would be a manifest absurdity in providing for a federal system of courts subject to the decisions of the courts of the various states as to the extent of their federal judicial power and the cases in which it might be exercised. The supremacy properly asserted by the federal courts has strongly tended to produce a general conception of national sovereignty as residing in the government of the United States. A dispassionate review of the occasions of apparent conflict between federal and state courts leads to the conclusion that there has not been an undue

aggression on the part of the federal judiciary nor any assumption of power not contemplated by the Constitution. In the exercise of their expediency jurisdiction, the federal courts have necessarily been subject to some disfavor because parties to litigation in those courts have found it less convenient to defend suits brought against them by citizens of other states than in their state tribunals. This inconvenience was necessarily contemplated by the framers of the Constitution and thought by them to be more than offset by the advantage which the federal courts would have in the impartial administration of law in such cases. State legislatures have, in some instances, endeavored to exclude the jurisdiction of the federal courts in eases between corporations permitted to do business in the state and citizens of the state; but state legislation restricting federal jurisdiction has necessarily been ineffectual. The anomaly of two judicial systems within the same territorial limits has not produced the confusion which might perhaps have been anticipated, but it has necessarily rendered more complicated the administration of justice. Such anomaly, however, exists not alone with reference to the courts but also with reference to the dual exercise within the same territorial limits of legislative and executive authority. It can be said with reference to the federal courts as well as with reference to the federal legislative and executive authority, that the existence of a national system is not incompatible with the preservation of the essential principles of local self-government.

See ADMIRALTY AND MARITIME JURISDICTION; COHENS VS. VIRGINIA; ELEVENTH AMENDMENT; EXECUTIVE AND JUDICIARY; JUDICIARY AND CONGRESS; JURISPRUDENCE; LAW, CONSTITUTIONAL, AMERICAN; and under COURT; COURTS.

References: Roger Foster, *Federal Procedure* (4th ed., 1909); R. M. Hughes, *Federal Jurisdiction and Procedure* (1904); J. L. Hopkins, *New U. S. Judicial Code, Annotated* (1911); J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, 229–227; also references under COURTS, FEDERAL, JURISDICTION OF.

EMLIN MCCLAIN.

COURTS MARTIAL. A court martial is a tribunal, composed exclusively of commissioned officers, for the trial of persons belonging to the military establishment for offenses in violation of military law; that is, for infractions of the penal requirements of the articles of war. Like other courts of the United States they are entirely statutory in character, and are equally without common law jurisdiction; their procedure is largely regulated by law, as are the offenses which may be tried by them and the punishments which they are authorized to impose. As commanding officers are responsible for the maintenance of discipline in the army it was the purpose of Congress in their establishment to place these tribunals at their disposal as instrumentalities to assist them in the enforcement of military discipline.

Forms of Courts.—The military tribunals now authorized by law are known as the "general court-martial," the "special court-martial," and the "summary court." The general court-martial, which has the most extensive jurisdiction, is composed of thirteen commissioned officers, or of any number greater than five but none less than five, when that number can be assembled without manifest injury to the service; otherwise—and in the judgment of the convening officer—of a less number, but never of less than five. The speeial court-martial is composed of from three to five members; the summary court, of a single officer. The first two courts above named are provided with judge-advocates who prepare the cases for trial, summon the necessary witnesses, and prepare the official record of the trial, which before being transmitted to the convening authority is authenticated by the signatures of the President and judge-advocate.

The general court-martial, the most important of these tribunals, has jurisdiction to try any person belonging to the army—whether commissioned officer or enlisted man—for any of the offenses named in the articles of war and, in a case in which such a penalty is authorized by law, may impose a capital sentence. The jurisdiction of the special court-martial lies between that of the general and the summary court, and has power to impose sentences of six months' confinement at hard labor, or to impose a forfeiture of six months' pay, at its discreation, and in a proper case, both sentences may be imposed. The inferior courts are without power to try commissioned officers, or to impose sentences of imprisonment exceeding six months in the case of the special court-martial, or three months in the case of the summary court, or forfeitures of pay extending beyond the same period; in addition, a sentence of reduction to the ranks may be imposed in the case of a noncommissioned officer.

Revision of Findings.—General courts may be convened at all times by the President, by the general commanding an army or a territorial division or department, or by the Superintendent of the Military Academy; in time of war they may also be appointed by the commander of an army, a field army, an army corps, a division, or a separate brigade. The sentences imposed by general courts-martial are in the nature of recommendations merely, until they have been approved or confirmed by the authority that created them, who, for that purpose, is known as the reviewing officer and may pardon, or mitigate any sentence submitted to him for approval. Though he may diminish he may not add to the punishment imposed by the court; if he deems the sentence excessive, or insufficient, or regards the findings

as not in conformity with the testimony, he may return the record of proceedings to the court for revision; the court is thereupon reconvened, and, after full consideration of the views expressed by the convening officer, may adhere to its original decision, or may modify its findings or sentence by the substitution of a new judgment for that already reached.

When the sentence of the court has been approved or confirmed by the reviewing authority it becomes a valid judgment, "and the proceedings cannot be collaterally impeached for any mere error or irregularity committed within the sphere of its authority. Its judgments, when approved as required, rest on the same basis and are surrounded by the same considerations which give conclusiveness to the judgments of other legal tribunals" (*Ex parte* Reed).

Status.—Courts martial, however, "are no part of the judiciary of the United States, but simply instrumentalities of the executive power. They are the creatures of orders, the power to convene them as well as the power to act upon their proceedings being an attribute of command. But though transient and summary their judgments, when rendered upon subjects within their limited jurisdiction, are as legal and valid as those of other tribunals; nor are the same subjects to be appealed from, set aside, or reviewed by the courts of the United States or of any State."

Testimony before courts martial is given under the sanction of an oath, or affirmation, and the rules governing the admission of testimony in the courts of the United States are fully applicable to courts martial; the accused may, if he desires, be sworn as a witness in his own behalf, but cannot be compelled to testify. The members perform their duties under the sanction of an oath resembling in some respects that administered to jurors in civil courts having criminal jurisdiction; they are also sworn not to disclose the vote or opinion of any member unless required to do so "by a court of justice in a due course of law;" the findings and sentence are also forbidden to be disclosed until they have been duly disclosed by the proper authority.

See COURT OF INQUIRY; JUDGE ADVOCATE GENERAL; MARTIAL LAW; MILITARY LAW.

References: U. S. War Department, *Regulations for the Army of the U. S.* (1908), index, title Courts Martial; *Manual for Courts Martial* (1910); W. Winthrop, *Military Law and Precedents* (2d ed., 1896). Significant cases: *Ex parte* Reed, 10 *Otto* 13; *Ex parte* Mason, 105 *U. S.* 696; Smith *vs.* Whitney, 116 *U. S.* 167, 777–179; *Am. Digest* (Century ed., 1897–1904), IV, 574–583. GEORGE B. DAVIS.

COURTS, STATE. See STATE JUDICIARY.

COURTS, SUPERIOR. A name given in nine states to a court intermediate in grade between the county courts and the supreme court. See STATE JUDICIARY. J. A. F.

COURTS, SURROGATE'S. A public office in New York and New Jersey having jurisdiction over the probate of wills and the administration of estates. The name surrogate comes from the deputy of the bishop who exercised such powers in the English ecclesiastical courts. See COURT OF PROBATE. **References:** Malone *vs.* St. Peters and St. Pauls Church, 172 *N. Y.* 269, 274 (1902); *Words and Phrases* (1904), VIII, 6822.

COWBOY PRESIDENT. A name sometimes applied to Theodore Roosevelt (*see*) in consequence of his experience as a North Dakota ranchman 1884–1886, and his subsequent interest in "cowboy" life. O. C. H.

COX, SAMUEL SULLIVAN. Samuel S. Cox (1824–1889) was born at Zanesville, Ohio, September 30, 1824. In 1853 he became editor of the *Ohio Statesman*, a Democratic paper published at Columbus, and through its columns made himself an important factor in state politics. The publication in this journal of an ornate article entitled "The Great Sunset" won him the subriquet of "Sunset" Cox, which adhered to him through life. In 1855 he was appointed secretary of legation at Lima, Peru. From 1857 to 1865 he was a Representative in Congress, where he was a leader among the "War Democrats." In 1866 he removed to New York City, and was again a Representative in Congress from 1869 to 1885, serving as Speaker *pro tempore* in 1876. He was a delegate to the Democratic national conventions of 1864, 1868, and 1876. In 1885 he was appointed minister to Turkey, but resigned the next year, and from 1887 to 1889 was once more in Congress. He died at New York City, September 10, 1889. His *Three Decades of Federal Legislation* (1885) has value as the work of a contemporary. See OHIO. Reference: J. V. Cox and M. H. Northrup, *Life of Samuel Sullivan Cox* (1898). W. MACD.

CRAIG vs. MISSOURI. (1830, 4 *Peters* 410). This case involved the question whether certificates issued by the state of Missouri as authorized by statute in amounts not exceeding ten dollars and not less than fifty cents, bearing two per cent interest, receivable in payment of public taxes and available to the state in payment of salaries and fees of public officers were "bills of credit" within the prohibition of the Federal Constitution (Art. 1, Sec. x, ¶ 1). The majority of the court held that the certificates provided for were in their nature fitted and intended for circulation as currency and that they were, therefore, such bills of credit as the state was prohibited to emit although they were not a legal tender in payment of debts; and that they were there-

fore invalid. (Furthermore as to bills of credit, *see* BRISCOE *vs.* KENTUCKY). This is one of the early cases in which the Supreme Court of the United States exercised the power of declaring a state statute invalid because in violation of the prohibitions of the Federal Constitution. E. McC.

CRAWFORD, WILLIAM HARRIS. William H. Crawford (1772–1834) was born in Amherst County, Va., February 24, 1772. He was admitted to the bar of Georgia in 1798. From 1803 to 1807 he was a member of the state senate, and was then elected to the United States Senate, where he sat until 1813. He was minister to France from 1813 to 1815, then for a year Secretary of War, and from 1816 to 1825 Secretary of the Treasury. He brought about the Tenure of Office Act of 1820. In 1824 he was nominated for the presidency by the Democratic congressional caucus; and in the election he stood third in the list of candidates, but the influence of Clay, who stood fourth and was not eligible, was thrown against him in the House of Representatives. His administration of the Treasury Department was investigated by Congress, and charges against him dismissed. In 1827 he became a circuit judge in Georgia, and held that position until his death, in Elbert County, September 15, 1834. **See** DEMOCRATIC-REPUBLICAN PARTY; TREASURY DEPARTMENT. **References:** J. E. D. Shipp, *Giant Days; or the Life and Times of William H. Crawford* (1909); J. B. McMaster, *Hist. of the U. S.* (1883–1910), III–V; D. R. Dewey, *Financial Hist. of the U. S.* (3d ed., 1907), chs. vii–ix. W. MacD.

CREDENTIALS OF DELEGATES Delegates to district, state or national conventions are furnished by their respective caucuses, primaries or conventions with credentials signed by the proper officials, which certify their regular election. These credentials, if to the national convention, must be submitted to the national committee in order to secure certificates of membership which admit the bearers to seats in the convention. "Contested elections of delegates must be reported with a printed statement of the grounds of protest at least twenty days before the National Convention." These protests are passed upon by the committee on credentials in the order in which they are filed. Sometimes one of two or more competing delegations is seated temporarily, sometimes all those whose credentials are challenged are excluded until the report of the committee has been accepted. Great importance attaches to the report, as its decision sometimes secures the nomination for one of two prominent candidates. Occasionally, when both contending delegations make strong claims to "regularity" (*see*), they are both admitted, each member being given half a vote. The lesser conventions do not require so early a presentation of credentials, but their committees may be even more arbitrary in their decisions of contested seats. **See** COMMITTEE ON CREDENTIALS; CONVENTION, POLITICAL; NOMINATION OF PRESIDENT. **References:** W. H. Sherman, *Civics* (1905), 132–3; P. S. Reinsch, *Readings on Am. Fed. Gov.* (1909), 827–845. J. M.

CREDIT, ECONOMIC. In economic literature the term credit signifies: (1) the ability of a person to secure money or money's worth in the present in return for a promise to pay an equivalent sum at some future date; (2) claims for future payment of money or its equivalent. A man's credit may rest upon his reputation for integrity and ability, or upon the fact that he possesses readily saleable commodities. The volume of credit in a given society is largely dependent upon the volume of readily saleable goods. In a mercantile community credit is far more extensively employed than in an agricultural community, in consequence of the fact that mercantile capital is more readily transformed into cash than agricultural.

Upon the basis of such facts some authorities on credit have developed the principle that credit is based upon goods, and tends to expand with the volume of goods. This principle brings to light one of the most important limitations upon credit, although requiring qualification to allow for purely personal credit and for changes in the distribution of wealth and in the character of production.

The primary function of credit is to transfer the control of capital from its owners to persons who can, presumably, use it to greater advantage. When money is loaned, or goods sold on time (a disguised loan transaction), it is to be presumed that the borrower anticipates a profit exceeding the interest he pays on the loan, or the excess of price usually exacted in credit sales. Thus credit serves to increase the productive power of the capital at the command of society, although not itself a productive agent.

A secondary function of credit is to permit the exchange of commodities without the intervention of money. A note executed by a borrower of generally recognized solvency may be accepted in exchange for commodities or services as readily as the sum of money it represents. In order that credit may be given the degree of currency essential to a satisfactory medium of exchange, it is usually necessary that it be standardized through the intermediation of a credit institution, such as a bank, one of the functions of which is to exchange its own credit, having a high degree of currency, for that of private business men, which usually has a less degree of currency.

The development of credit, properly organized through efficient credit institutions, has the effect of permitting a large volume of

business to be transacted with a minimum amount of money. When business is transacted chiefly by means of credit media of exchange it is likely to be thrown into violent disturbance by any influence casting doubt upon general solvency of business men, such as the failure of important income sources to yield anticipated returns. A sudden contraction of the medium of exchange takes place, with resultant unsaleability of commodities and depression in prices.

See Crises, Economic; Exchange, Principles of.

References: H. D. MacLeod, *Theory of Credit* (2d ed., 1897); J. L. Laughlin, *Principles of Money* (1903); D. Kinley, *Money* (1904); J. F. Johnson, *Money and Currency* (1905).

Alvin S. Johnson.

CREDIT MOBILIER. Name given to a Pennsylvania corporation which became, in 1867, the construction company for the building of the Union Pacific Railroad. Through it the controlling stockholders of the Union Pacific Railroad Company secured for themselves vast profits accruing from the construction contracts. During the presidential campaign of 1872 the press charged many prominent congressmen with having received bribes in the form of gifts of stock in the corporation. Reports of House and Senate investigating committees implicated a number of public men. The House committee recommended the expulsion of two Representatives but they were merely censured. The Senate took no action upon the committee's recommendation that one Senator be expelled. The committees "whitewashed" the other congressmen implicated in the affair by declaring them to have been "guiltless of corrupt acts or motives."

O. C. H.

CREDIT, PUBLIC. Primarily, the ability of public bodies to buy or contract to buy supplies; secondarily and more commonly used, to denote the borrowing capacity and rate at which money can be raised. Any public security which sells at less than par is usually evidence that the government which issues it has not complete public confidence; although in times of panic or of war the strongest governments may be obliged to borrow on unfavorable terms, either by paying a high rate of interest or by accepting less than the face of the obligation in payment. The credit of the Federal Government is such that it has at one time exchanged 2 per cent bonds at par for expired or called bonds. The eastern states and large cities borrow as low as 4 per cent or even 3½ per cent; but most western states and cities compete with private enterprises in their neighborhood and must pay a higher rate of interest. See Bonds; Debt, Public, Administration of; Debt, Public, Principles of; Public Accounts.

A. B. H.

CREOLE. A creole is a person of French or Spanish descent, born in the new world, in the possessions, or in what were possessions, of France or Spain. The term as commonly applied is limited to the native white inhabitants of the state of Louisiana.

T. N. H.

CREOLE CASE. The brig *Creole* sailed from Hampton Roads for New Orleans October 27, 1841, carrying 135 slaves. In a successful attempt to obtain control of the vessel, the slaves, on November 7, murdered one passenger and injured the captain and several of the crew. The slaves then forced the mate to take the vessel to the British port of Nassau. Here the British authorities, while detaining those concerned in the murder, allowed the other slaves to go free, on the ground that according to British law slaves coming within British jurisdiction were free. The United States contention was that this territorial law could not apply to a vessel which thus entered the port under *vis major.* Joshua Bates, umpire, later rendered the decision "that the conduct of the authorities at Nassau was in violation of the established law of nations, and that the claimants are justly entitled to compensation for their losses." The total award to the United States claimants was $110,330. See Asylum; Extraterritoriality; Giddings, J. R.; High Seas; Slave Trade. References: J. B. Moore, *Int. Arbitrations* (1898), IV, 4375, *Digest of Int. Law* (1906) II, 358; J. B. Scott, *Cases on Int. Law* (1902), 255.

G. G. W.

CRIME. An act or omission "prohibited by public law for the protection of the public and made punishable by the state in a judicial proceeding in its own name. It is a public wrong as distinguished from a mere private wrong or injury to an individual" (W. L. Clark and W. L. Marshall, *Criminal Law* [2d ed., 1905], § 1). Blackstone excluded misdemeanors from the term crimes, but the word is now used generically to include treason, felonies and misdemeanors.

H. M. B.

"CRIME OF '73." A term applied to the demonetization of silver in 1873, by a statute which extremists of the silver party later claimed to have been covertly put through by a legislative plot. See Coinage and Specie Currency in the United States; Coinage, Economic Principles of; Coinage, Free; Silver Coinage Controversy.

D. R. D.

CRIME, STATISTICS OF. The statistics of crime in the United States are very unsatisfactory. Since there is no uniformity in the different states of the Union, either in the collection, classification or publication of criminal statistics, it is impossible either to ascertain sufficient definite facts, or to make proper comparison of facts as between states.

CENSUS OF PRISONS, 1904

	Geographical Divisions					
	Continental United States	North Atlantic Division	South Atlantic Division	North Central Division	South Central Division	Western Division
Total Population	81,301,848[1]	22,532,917	11,090,917	27,912,470	15,268,265	4,497,279
Number of Prisoners	81,772	27,389	11,150	21,000	14,614	7,619
Ratio of Prisoners per 100,000 Population	100.6	121.6	100.5	75.2	95.7	169.4
Ratio of Increase (+) or Decrease (—) of Prisoners, 1890 to 1904, per 100,000 Population	—30.9	—40.8	—28.3	—13.6	—50.9	—52.7
Per Cent Distribution of Prisoners						
Male	94.5	90.8	94.5	97.0	96.2	97.6
Female	5.5	9.2	5.5	3.0	3.8	2.4
White	67.4	88.9	25.6	79.5	29.7	90.2
Colored	32.6	11.1	74.4	20.5	70.3	9.8
Native	76.3	67.3	93.5	84.0	89.5	74.9
Foreign born	23.7	32.7	6.5	16.0	10.5	25.1
Per Cent Distribution of Prisoners by Class of Institution						
State prisons and state and county penitentiaries [2]	65.2	45.9	79.6	62.1	87.8	78.2
Reformatories for adults	8.9	15.5		14.4		
County jails and workhouses	22.7	38.3	17.4	14.6	10.9	19.0
Municipal prisons and workhouses	3.3	0.2	3.0	8.9	1.3	2.8
Per Cent Distribution of Prisoners by Class of Offenses						
Against society	21.7	37.6	13.2	16.5	8.6	16.4
Against the person	31.8	20.6	42.4	30.3	45.9	33.9
Against property	45.5	41.2	42.1	52.1	45.1	48.1
Double crimes	0.2	0.2	0.3	0.1	0.2	0.1
Unclassified	0.2	0.1	0.1	0.3	0.1	[3]
Offense not stated	0.7	0.4	2.1	0.6	0.1	1.5

[1] Census of 1900.
[2] Includes U. S. civil prisons.
[3] Less than one tenth of 1 per cent.

The most comprehensive study of criminal statistics ever undertaken in the United States was that of the census of 1890 under the direction of Dr. Frederick Howard Wines, which covered the following facts: (1) the number of prisoners serving sentence in the United States, by age, sex, nationality, etc.; (2) the number of prisoners awaiting trial in the United States, similarly classified; (3) the length of sentences imposed upon sentenced prisoners in the United States; (4) the country of birth of prisoners in the United States Only the first of the two volumes of these statistics was published; the second lies in manuscript in the archives of the Census Bureau.

In the census of 1900 no effort was made to compile criminal statistics beyond the number of prisoners in confinement. In 1907 a special report was published by the census office on prisoners and delinquents in institutions showing: (1) the population of prisons and reformatories for adults, June 30, 1904; (2) the commitments to such institutions during 1904; (3) similar statistics relative to special institutions for juvenile delinquents. This report enumerated 81,772 prisoners, as against 82,329 shown by the census of 1890. In many states the prison population rose, but there was a decrease in Maine, New York, Pennsylvania, the District of Columbia, and many southern and western states. Inasmuch as the total population greatly increased, the number of prisoners for each 100,000 in the United States fell from 131.5 to 100.6, and this falling off showed itself in every one of the geographical divisions of the United States, and in 36 states. The census publication itself calls attention to the fact that such ratios furnish a most unreliable index of the prevalence of crime. A community with a large number of prisoners in proportion to its population may be far more law-abiding and orderly than one with a low ratio. It is not merely a question of how the laws are enforced, but what standards the courts follow in imposing penalties, and what facilities the community provides for confining a considerable number of prisoners. In some states practically all misdemeanors, whether first or second offenses, are punished by fines; while in others a term sentence is commonly imposed. Certain offenses also, such as drunkenness and simple assault and battery, in some states generally go unpunished, while in others they help very materially to swell the numbers of the prison population.

One conclusion, however, may safely be drawn from the following table taken from the census report of 1904, that foreign born immigrants do not contribute an undue proportion of the criminal population:

Division	Per Cent Foreign Born	
	Among white prisoners June 30, 1904	In the general white male population 15 years of age and over, 1900
Continental U. S.	23.7	23.0
North Atlantic	32.7	31.8
South Atlantic	6.5	5.3
North Central	16.0	24.8
South Central	10.5	6.2
Western	25.1	29.8

It will be observed that the ratio of prisoners appears to be excessive in the south Atlantic and south central states; but the number of foreigners in those states is very small. In the north central states, where the foreign born males constitute 24.8 per cent, the foreign born prisoners constitute only 16 per cent; and in the western states where the foreign born males constitute 29.8, the foreign born prisoners constitute only 25.1. If additional facts could be ascertained, if probable that the comparison would be still more favorable to the foreign born population.

See Aliens, Constitutional Status of; Criminal, Reformation of; Criminology; Jury, Petit; Law, Administration of, by Courts; Legal Procedure, Reform of; Life Protection of; Lynching; Order, Maintenance of; Penalties for Crime; Public Morals, Care for; Social Evil, Regulation of.

References: F. H. Wines, *Punishment and Reformation* (1910); U. S. Bureau of the Census, *Prisoners and Juvenile Delinquents in Institutions, 1904* (1907), 13, 62; C. R. Henderson, *Penal and Reformatory Institution* (1910); American Prison Association, (formerly National Prison Association) *Reports* (1870 to date); L. N. Robinson, *History and Organization of Criminal Statistics in U. S.* (1911). Hastings H. Hart.

CRIMES AGAINST UNITED STATES. See Courts, Federal.

CRIMINAL, HABITUAL. In recent years the habitual criminal has been recognized by law as a special menace to society. Leading penologists have advocated the view that when a criminal was demonstrated to be confirmed in the habit of crime, he should be restrained for life, unless he should sooner give evidence of reformation.

The first habitual criminal act, passed by the legislature of the state of Ohio in the year 1885, provided that after serving two sentences for a felony, a convict might be indicted as a habitual criminal; and on conviction might be sentenced to the penitentiary for a period not exceeding twenty years. Laws similar to the Ohio statute have been passed by several other states.

Those who advocate such laws argue that the habitual criminal is a menace to the safety of society; that he destroys large amounts of property; that he creates a large amount of unnecessary expense in reconvictions, and that the only hope of reformation is to subject him to discipline long enough to give opportunity for actual results. They maintain also that these laws have a strong deterrent effect, and some have argued that such laws tend to drive out habitual criminals and hence are at least advantageous to the states which enact them.

Those who oppose the habitual criminal acts maintain that the penalty may be out of all proportion to the offense; that many discharged criminals are driven into crime by the difficulty of obtaining employment and by the severity of the police. They maintain that as a matter of fact, the second offense may indicate no more confirmed habits of crime than the first offense. Some of them maintain, also, that the tendency of long sentences is to harden the criminal rather than to reform him, that many convicts have no idea of reforming; that in many cases it is known in advance that such convicts will return to their criminal practices the moment they are discharged. They say that it is as absurd to sentence the habitual criminal for a fixed term of one, two, or five years, as it would be to send a lunatic to the insane hospital for one, two, or five years. The lunatic is sent to the insane hospital to be retained until cured, be the time long or short; and the criminal ought to be dealt with on the same principle.

See Bertillon System of Measurement; Crime, Statistics of; Criminal, Reformation of; Parole System.

References: Maurice Parmelee, *The Principles of Anthropology and Sociology in their Relations to Criminal Procedure* (1908); F. H. Wines, *Punishment and Reformation* (1910); Cesare Lombroso, *Crime and its Causes* (1911); American Prison Association, (formerly National Prison Association), *Reports* (1870 to date). Hastings H. Hart.

CRIMINAL LAW. See Law, Criminal.

CRIMINAL PROCEDURE, PROPOSED REFORMS IN. See Legal Procedure Proposed Reforms in.

CRIMINAL, REFORMATION OF. Competent students of penology are not fully agreed as to the proper ends to seek in dealing with criminals. Some adhere to the retributory theory, the *lex talionis* of the Mosaic law, namely, to administer to the prisoner a punishment adjusted as nearly as possible to the measure of his guilt. Some maintain that the chief object of dealing with criminals should be deterrence, and that they should be made to realize the terrors of the law, in order to keep them from violations of it. Some main-

tain that the protection of society is the essential element, and the only legitimate object to be sought in dealing with criminals.

It is now pretty generally agreed that the reformation of the prisoner, by establishing such a character as will insure, if possible, his right conduct thereafter, is the legitimate end to be sought. The fact is pointed out that the most efficient method of deterrence and the surest protection to society is the reformation of the criminal. Objection has been made to reformatory prisons and reformatory discipline, on the ground that such discipline is inconsistent with justice; that it is a soft and impractical method of dealing with criminals, and that it encourages crime. The reply is that under a proper reformatory discipline the prisoners are held to stricter account, and are compelled to exert themselves more strenuously, in order to obtain their liberty, than under the operation of fixed sentences and old fashioned discipline. Hardened criminals who are acquainted with both the state reformatories and the state prisons have begged to be committed to the state prison, in preference to the reformatory, because they consider the reformatory discipline more severe.

The essentials of reformation are: (1) to enlist the prisoner's will in favor of his restoration; (2) to produce such courage, uprightness and stability of character as will enable him to resist the temptations by which he will be beset upon discharge; (3) to equip him with some means of getting an honest livelihood which he will be able to put in practice after his release; (4) that the prisoner upon release shall not be left to his own devices, but that some friendly agency shall be available for his support, encouragement and guidance for a limited time.

See CRIMINAL, HABITUAL; DELINQUENTS, CORRECTION OF; GOOD BEHAVIOR OF PRISONERS; INDETERMINATE SENTENCE; PAROLE SYSTEM; PENALTIES FOR CRIME; PRISONERS, PROBATION OF; REFORMATORIES, JUVENILE; SUSPENDED SENTENCE.

References: Maurice Parmelee, *Principles of Anthropology and Sociology in their Relations to Criminal Procedure* (1908); C. R. Henderson, *Preventive Agencies and Methods* (1910); C. E. Wines, *Prisons and Child Saving Institutions* (1880); Congresé Penitentiare International, *Sessions* No. 1 (1872 to date); National Conference on Criminal Law and Criminology, *Proceedings*, No. 1 (1909 to date); Z. R. Brockway, *Fifty Years of Prison Service* (1912); S. J. Barrows, *Reformatory System in the United States* (1900); American Prison Association (formerly National Prison Association), *Reports* (1870 to date); H. M. Boies, *Science of Penology* (1901); C. R. Henderson, *Penal and Reformatory Institutions* (1910); F. H. Wines, *Punishment and Reformation* (1910).

HASTINGS H. HART.

CRIMINAL REGISTRY. In some European countries there is a complete registration of all convict prisoners and, in the larger cities a registration of important suspects. In the United States it is extremely difficult to establish a general registry of prisoners, for the reason that criminal laws of the United States are made by 48 different and independent governments, and scarcely any two of the states of the Union have uniform laws for the registration of criminals. The Bertillon system (*see*) of registration is used by many state prisons and by many city police offices and an effort has been made to maintain a voluntary central registration bureau. This plan, however, cannot be made effective without legal sanction and it is practically impossible to secure uniform registration.

Recently much public interest has been aroused by the introduction of the finger print system of registering prisoners and there are indications that ultimately a general registration may be introduced, but it will be impossible to secure general and uniform registration unless a way shall be found to establish it by national authority.

See BERTILLON SYSTEM; CRIME, STATISTICS OF; CRIMINAL, HABITUAL.

Reference: American Prison Association, (formerly National Prison Association), *Reports* (1870 to date).

H. H. H.

CRIMINOLOGY

Definitions.—The field of study of the phenomena of crime may be outlined as follows: (1) Theory of crime—the systematic description and explanation of the facts; (a) criminal anthropology, a study of the physical and psychical characteristics of delinquents, by age, sex, economic class, race, to this study the chief contributing sciences are anatomy, physiology, anthropology, psychiatry; (b) criminal sociology (theoretical), a study of the social conditions which favor the development of antisocial tendencies; the causal influence of race, culture, physical surroundings, economic conditions, opportunities of education, public sentiment. (2) Chief practical disciplines: sciences of police administration, criminal law, judicial police administration, criminal law, judicial procedure, prison science (or penology), and systems of prevention.

Evolution of the Conception of Crime.—Among animals, nature folk, children and persons blind with rage no general conception can

be clearly made out. Something from without hurts or threatens; the body is struck, or some precious personal possession is snatched away; and there is an instant unthinking reaction. The dog seizes the stick which gave him pain; the angry savage kicks a stone which fell on him. The protective value of this unreasoning reaction is obvious; it has a tendency to maintain physical integrity and life. The irritable resistance to encroachment is visible in protoplasmic masses of lowly organisms. Revenge is more deliberate; it is reaction in view of a remembered injury and even looks to defense against future harm or loss. The higher animals manifest memory for past hurts and organize for defense against anticipated repetition of aggression. In early human society, beginning with the mother-infant group, solidarity of reaction is known for resistance, defense, revenge. In the class and tribe each individual stands for the group, and the group is responsible for each member. The value of this tendency lies in its protection of life; the individual security is enhanced by combination in revenge or demand for compensation. These unreasoned impulses are products of selection in the struggle for existence and the competition of groups. The wergeld of our Teutonic ancestors was collected by the community for a wrong to a member: it was effective for defense; it satisfied the thirst for vengeance; it diminished costly bloodshed and inherited vendetta. As the responsible group grew larger, primitive revenge was diluted and controlled by appeal to a more impersonal adjustment. This movement issued in political society.

The effect of a true political organization was to remove, still further from each other, the irritant and the person hurt. The *patria potestas*, which, in primitive society, gave the child's life into the irresponsible father's hand, was greatly reduced; the individual did not suffer for his father's sins, nor escape in the crowd from his personal guilt. Judgment became more deliberate, calm, impersonal, prescient; but ideas of vengeance and compensation lurk at the bottom even in our own times. Mob vengeance is a sign of the recrudescence of the animal and savage reaction. Civilization has had a brief history; it is a thin crust over volcanic fires. It came late, and the tiger in us had a long start. The vendetta is still familiar in backward communities, as insular Sicily, the mountains of Kentucky and Tennesse, and in mining camps. Some of the apparently cold and legal abstractions of "justice" mean nothing if they do not mean retributive vengeance, somewhat softened by the Teutonic notion of compensation and expiation.

Modern Conceptions of Crime.—Crime, which is the word for the more serious forms of delinquency in the modern mind, is a wilful antisocial act of a responsible person. (a) The act must be clearly antisocial, in the judgment of the community; and this judgment is expressed in the criminal code. The act must be one which threatens to hurt the bodies, property, character or established institutions of the community, and it must be serious enough to require public action. If the penal code condemns acts which are not generally regarded as antisocial, the law becomes a "dead letter." There are only too many illustrations of this. (b) The act must be wilful. A man who kills his neighbor by accident without negligence is pitied, not condemned. The insane person who strikes a fatal blow or sets fire to a church is properly confined because he is dangerous; but his act is not a crime, in reason or in law. The child who takes food or coal from a warehouse requires prompt care, restraint and discipline; but his act is not a crime. It is true there are many border-line cases, which set enough problems for medical jurisprudence and judicial wisdom; but the principle is clear and generally accepted. There are a few criminologists who teach that crime is a disease and delinquents patients. But judges and prosecutors are still differentiated from psychiatrists, and with good cause. No nation has enacted laws on the basis of such confusion of ideas.

This idea, that crime is a wilful act, does not involve any metaphysical notion about "freedom of the will" or indeterminism; for many determinists define crime as an act of the will of a responsible and mature person. That controversy has no place in a practical science.

A crime is the act of a person; delinquency is a trait of character, as well as a deed. In recent years this aspect of the problem has received, as it deserves, more adequate attention than formerly. Indeed, without the recent advances in biology, psychology, statistics and social science, this problem could not be fairly studied. It is false to assert that the legal profession, legislators, and judges have entirely ignored the character of the delinquent and thought exclusively of the offense; but it is still true that the legal mind generally has not dealt adequately with the subject, and that many legal maxims are vitiated by this defect. The motives, habits, antecedents, tendencies, constant choices, associations, education and probable future conduct of the delinquent on trial are all taken into account in penal codes, and judicial assignment of penalties. The criminal law fixes the maximum and minimum of fines and terms of imprisonment, with the purpose of giving the court a margin of discretion in individual cases. But there is not a sufficient and conscious development of the personal element in law or judicial decisions; and both will be profoundly modified for the better when lawyers more generally have studied psychology, anthropology and social science.

Criminal Anthropology.—This must not be identified with the special doctrines of any particular body of writers, as the "Itali

PER CENT DISTRIBUTION, BY AGE, OF PRISONERS COMMITTED DURING 1904

	10—20 years	20—30 years	30—40 years	40—50 years	50—60 years	60—70 years	70 years
Male	10.3	34.8	25.0	17.0	8.6	3.5	0.7
Female	7.9	34.0	24.4	18.0	7.4	3.5	1.0
White							
[1] Native	17.6	70.0	57.8	35.0	14.3	4.5	0.7
Foreign born	7.3	42.3	56.5	48.4	26.5	15.1	4.1
[2] Colored	36.3	107.7	36.5	13.1	4.5	1.3	0.6

PER CENT DISTRIBUTION, BY LITERACY, OF PRISONERS COMMITTED DURING 1904

	Sex		Color		
	Male	Female	White		Colored [2]
			[1] Native	Foreign	
Literate	83.3	80.1	92.9	78.0	61.3
Illiterate	12.2	16.7	4.4	20.3	32.3
Can read but not write	1.1	1.7	0.7	1.2	2.6
Can neither read nor write	11.1	15.0	3.7	19.0	29.7
Literacy not stated	4.5	3.2	2.7	1.7	6.5

PER CENT DISTRIBUTION, BY PREVIOUS OCCUPATION, OF MALE PRISONERS COMMITTED DURING 1904

Occupation	White		Colored [2]
	[1] Native	Foreign	
Professional	1.1	0.7	0.6
Clerical and official	2.9	1.6	0.3
Mercantile and trading	2.5	2.6	2.9
Public Entertainment	0.8	0.8	0.2
Personal service, police and military	1.8	1.4	2.3
Laboring and servant	44.9	52.8	65.3
Manufacturing and mechanical industry	27.5	26.2	5.5
Agriculture, transportation, and other outdoor	17.6	13.2	21.4
All other occupations	0.9	0.7	1.1

PER CENT DISTRIBUTION, BY PREVIOUS OCCUPATION, OF FEMALE PRISONERS COMMITTED DURING 1904

Occupation	White		Colored [2]
	[1] Native	Foreign	
Musicians and teachers of music	0.2	0.1	0.2
Teachers in schools	0.1	----	0.1
Stenographers and typrewriters	0.3	[4]	----
Bookkeepers, clerks, and copyists	0.7	0.2	----
Hotel and boarding house keepers	0.2	[4]	----
Laundresses	3.1	4.3	7.9
Nurses and midwives	0.3	0.6	1.0
Servants	74.3	78.4	78.4
Artificial flower and paper box makers	0.1	[4]	----
Cigarmakers and tobacco workers	0.4	0.2	0.1
Mill and factory operatives (textiles)	5.6	7.4	0.1
Milliners	0.2	0.4	----
Dressmakers and seamstresses	4.5	2.2	1.0
Telegraph and telephone operators	[4]	----	----
All other occupations	9.8	6.1	11.1

[1] Includes unknown parentage but not unknown nativity.
[2] Includes Negro, Mongolian, Indian.
[3] Per cent not shown where base is less than 100.
[4] Less than one-tenth of 1 per cent.

School," with Lombroso at their head. Space does not permit, here, a critical estimate of the merits, achievements and defects of this school. They certainly have compelled investigators in this field to give more systematic study to the delinquent man—his physical structure, hereditary antecedents, social surroundings, family history, and all the influences which have made him what he is. The discovery of the criminal act will always be important, for courts cannot convict a man merely because he has an ugly face; they must trace the deed to its author, beyond a reasonable doubt, and hold him responsible for it. This, however necessary, is only the beginning. There remains the entire series of measures for dealing with the offender whose monstrous deed has revealed a dangerous disposition, not only in this particular offender but in the group to which he belongs. The study of text books on criminal law, of codes and of judicial charges helps only a little way in this vast new field of scientific study. The accompanying tables give a general idea of the distribu-

tion of prisoners with regard to age, literacy and occupations.

The most important achievement of criminal anthropology is to have made clear the nature and importance of the difference between the classes of delinquents. A few illustrations will indicate the general direction of this inquiry. Some writers have gone to an extreme in making fine and sharp distinctions of classes. We must reject the title "insane criminal," because one who is insane is incapable of committing crime. "Child criminals" do not exist; they are immature, morally in danger, but not criminals, according to a legal and also rational definition. It seems probable that a vast number of vagabonds, confirmed inebriates, degenerates of both sexes will be excluded from the crime classes and placed under a kind of medical and pedagogical police for suitable treatment and prolonged detention in the interest of public decency and safety. The establishment of farm colonies, and, as in Massachusetts, departments for defective delinquents, is a recognition of this important new classification.

Habitual Criminals.—There remain, for practical purposes, only two great groups or classes of delinquents, the beginners and the habituals. The word "beginners" is used here because the terms "single offender" and "first offender" are not exact. Some of the younger offenders may commit many criminal actions, and wilfully, and yet not be deeply and habitually criminal. Recidivism alone is not a sufficient evidence of an ingrained criminal character which marks the habitual offender. Failure to understand and recogonize in law and practice this fundamental difference between the confirmed or habitual criminal and the beginner is to blame for many of the confessed failures of criminal law and penitentiary discipline. So long as men are treated simply according to the particular offense which comes before the criminal court, and the personal character is not duly considered, so long will there be some basis for the charge that the whole business of criminal law is bankrupt. Within this schematic classification are found innumerable sub-types, combinations of temperaments, and individual traits which afford worthy subjects for endless scientific investigation and the play of good common sense. Attached to every juvenile court, criminal court, reform school, and prison should be a complete modern laboratory for the scientific investigation of the physical, psychical and social antecedents of the inmates. In this direction hopeful beginnings have been made, as in the juvenile court of Chicago; the studies assisted by the Russell Sage Foundation; the superintendents of the schools for the feeble minded.

Some habitual criminals have certain innate tendencies which easily develop into confirmed antisocial disposition. This fact has given some ground for a classification of certain habitual offenders as "born criminals," and even as constituting a variety of the human genus. The inheritance of physical defects is beyond doubt; but the declaration that "crime is inherited" has no biological nor legal meaning. It is a vague and misleading phrase. There is no specific germ or affection of the protoplasmic structure of the fœtus which causes crime; although with a certain inferior bodily condition crime is more likely. The hereditary factor cannot be entirely ignored; and there are many persons, not insane, nor imbecile, who, from early life, even under excellent influences, make it difficult to guide them and keep them from vicious and criminal ways. Other habitual criminals start with at least normal organism, and gradually acquire the criminal habit by vicious indulgence, evil associations and antisocial means of gratifying wants, until they are no longer reclaimable by any methods yet known, even to the most skilful and patient among prison teachers and wardens.

These studies may be legitimately pursued with reference to the trial procedure in courts, in order to make sure that the innocent are protected and the guilty convicted. Perhaps they have even more value for the educational side of prison administration. The modern reformatory prison is an institution for reeducation of the morally deformed, the most difficult task ever set for tne science and art of teaching, and one which has attracted too little attention in normal schools. One competent director in each state would be sufficient for the management of these laboratories; but as fast as appropriations can be secured the director should be given assistance and the studies should be specialized and extended. Ultimately this investigation will go beyond the mere examination of the physical and psychical characters of individuals, and will include their domestic and other social surroundings. This latter method will probably yield even greater results than the study of individuals apart from their social environment.

See County Jails; Court, Juvenile; Delinquents; Drunkenness, Regulation of; Order, Maintenance of; Parole System; Penalties for Crime; Penitentiaries; Poverty and Poor Relief; Prisoners, Probation of; Social Reform Problems; Sociology; and under Crime; Criminal.

References: H. Ellis, *The Criminal* (2d ed., 1897); Georges Vidal, *Cours de Droit Criminel et de Science Pénitentiaire* (3d ed., 1906), many references; F. H. Wines, *Punishment and Reformation* (2d ed., 1910); Bibliography in N. Y. Pub. Library, *List of Works Relative to Criminology* (1911); R. M. McConnell, *Criminal Responsibility and Social Restraint* (1912); C. R. Henderson, Ed., *Correction and Prevention* (1910).

Charles Richmond Henderson.

CRISES, ECONOMIC

Definition.—A crisis is a period of widespread financial disturbance, caused by a sudden and general effort to liquidate, and marked by a scaling down of capital values, restriction of credit, and by many insolvencies and bankruptcies. It is a phase of a cycle of industrial conditions which may be briefly characterized in the words of Lord Overstone as, "State of quiescence, improvement, growing confidence, prosperity, excitement, overtrading, convulsions, pressure, stagnation, distress, ending again in quiescence." The words "crisis" and "panic" are often used interchangeably, although the former seems to be the more appropriate term by which to designate the entire period during which industry falls from prosperity to depression. A panic implies a briefer period of intense financial disturbance during which the morale and judgment of the business community are more or less seriously affected by emotions of fear and despair. A depression is a period during which business is below normal in volume. It usually follows a crisis, although it may exist independently. A depression is a chronic malady of industry, while a crisis is acute.

Theories of Crises.—Many causes have been assigned for crises. In a credit economy, under a régime of individual initiative, there are inherent weaknesses in the type of industry characteristic of western Europe and America which cause it to respond easily to specific favorable circumstances and enter upon a period of undue expansion; and, contrariwise, cause it as easily to change from this expansion, after it has run for some time, to depression upon the appearance of unfavorable conditions. Students of crises who search for causes may, therefore, be divided into two classes: such as have given attention to the specific conditions which have either started or stopped the over-trading of preceding industrial cycles; and such as have endeavored, by making an analysis of the machinery of industry, to discover the inherent weaknesses by which it can be set upon the track of an abnormal activity, and eventually ditched in a depression.

Through the study of specific conditions we learn that one crisis is caused by monetary legislation, another is due to wars, while others have resulted from inventions, changed routes of commerce, the failure of some great firm, etc. In any crisis we have, obviously, to do with a composition of causes which compound their effects. These causes may be grouped as actuating and ultimate. The actuating causes are never twice alike, are seldom capable of scientific control, and often have to do with phenomena not within the province of economic science to explain. It is not through the observation of these, therefore, that economics can make its contribution, but by the search for ultimate causes, through study of the characteristic processes and policies of industry.

Socialistic writers assert that crises are characteristic of the anarchistic state of industry which has prevailed since the destruction of the mediaeval system, and which will persist until the completion of that comprehensive system of industrial administration with which western society is now in process of providing itself. With the growth of the world trade, which followed the age of discoveries, an outlet for manufactures was created in the Orient and the new world which revolutionized the means of production, swept away the existing methods of domestic trade, threw into a state of flux the social classes, and rendered the existing commercial philosophy and methods of government control out of date. In the new commerce the utmost individualism and *laissez-faire* (*see*) at first prevailed. In foreign trade, the factor was far away from his principal, and was necessarily given a free hand. In domestic industry, locations and methods changed so rapidly that private and public plans for organized control fell to pieces in the making. In short, while productive power increased enormously, and the market widened to include the world, there was not, at first, an equal growth of agencies for general supervision and control. As a result responsibility fell into the hands of capital, which not only had to labor with the difficulties incident to a rapid evolution, but suffered with the weakness of being itself a new factor, with as many policies as it had possessors, and all of these policies private rather than social. In this stage, which still continues, production and consumption can not be properly coördinated, and so the whole economic order periodically falls into anarchy to pass through a destructive but temporary readjustment. Agencies of control are, however, being perfected rapidly. They consist of means for the collection and distribution of information, voluntary agencies for coöperative action, the concentration of management through consolidated corporations, and, finally, state control. Socialists expect that great corporations will eventually so cover the entire field of industry, and subject to an ever-increasing public control, be able so completely to command the situation, that crises will be prevented. In what has preceded a reason is given why capitalistic management has not been able thus far to prevent crises. It may be summed up in the phrase, lack of sufficiently comprehensive organization.

Two other reasons may be found in the literature of crises. (1) In English classical economics, especially in the writings of J. S. Mill, there is the idea, deduced from the law of diminishing returns, that the field of enterprise or of profitable employment of capital tends to widen more slowly than capital is formed. To offset the resultant tendency of profits to decrease, investments of an unusual and hazardous nature are made by capitalists. These result in the destruction of capital, and so, in general alarm and a crisis. (2) Another explanation of the insufficiency of capitalistic management is contained in the writings of Rodbertus, who elaborated the so-called "iron law of wages," which was formulated by Ricardo. Under this law the wage-earner does not receive all that he produces, but a minimum sufficient to cause him to reproduce and maintain the supply of labor. The difference between what the laborer produces and receives is seized by the capitalist who, being ambitious to increase his power, does not spend the surplus for consumption goods but converts it into capital through investment. Thus labor, progressively better supplemented by capital, increases in productivity, while the laborer's demand for commodities, restricted by the "iron law of wages," does not increase at so rapid a rate. The result is over-production which ends, sooner or later, in industrial disaster.

Crises and Credit.—In contemporary literature, devoted to the cause of crises, the chief place is given to the subject of credit (*see*). Through credit, in normal times, a vast sum of obligations is created which are partly secured, but partly rest on faith in the property, ability and character of the borrower. These obligations are of short or indefinite maturity, and their liquidation may be quickly forced. During the expanding phases of an industrial cycle, optimism tends to ease the terms on which funds may be borrowed, so that progressively capital comes under the management of inexperienced, unduly sanguine, or speculative debtors who, by their mistakes, eventually alarm the creditor class and lead to general liquidation. The most fruitful cause of error in the use of borrowed capital probably arises from the fact that a business which receives an addition to its current assets, through a loan, finds at once that a portion of the funds previously employed in pay-roll, invoice, or accounts receivable is liberated. Under these conditions, the management may yield to the desire for additional buildings and equipments, or for some other form of fixed assets, and thus reduce the ratio between current assets and liabilities, cut down the working capital, and render the business liable to insolvency upon the appearance of trade reverses. In normal times a bank credit is as good as legal tender, and a vast system of cancellation economizes the use of money for the payment of debt; but during a crisis confidence in banks is shaken and currency is demanded. The supply of legal tender, sufficient for the needs of business in normal times, is entirely inadequate to perform the functions demanded of it during a panic.

The facilities required to keep the operations of credit from disrupting industry are of two classes: first, adequate means for safe-guarding the granting of advances which have a short or indefinite period to run, and second, an emergency currency to make possible the liquidation of an immense amount of these advances in the brief period of the panic (*see* ELASTICITY OF THE CURRENCY). Considering the first of these; to prevent a progressive deterioration in the character of borrowers, and to prevent an over-development of fixed assets in relation to working capital, the business community needs to provide itself with well-established rules as to the ratios which shall prevail between the different classes of assets, and between assets and liabilities, in different kinds of businesses. The establishment of such rules would be promoted if some rediscounting agency of first-class responsibility could be added to our financial machinery. The acceptance broker acts in this capacity abroad. It was a part of the Aldrich-Vreeland currency plan to make rediscounting a function of the reserve associations of banks. In addition to this, means are needed to permit the total credit advances made at any time to any one business concern to be accurately calculated. The exchange of credit information through mercantile associations, the registry of commercial paper, and the demand for certified audits, are steps now being taken in this direction in the United States. As to the second remedy; an elastic currency can probably be secured most readily by providing a national organization of banks, which shall be authorized to issue an emergency currency, based on approved assets of commercial banks and, in contrast with clearing-house certificates (*see*), good in settling balances between banks of different localities (*see* BANK, CENTRAL; RESERVE SYSTEM, FEDERAL).

American Crises.—The history of crises shows us that they are practically nineteenth century phenomena. They have come to us in company with industrial freedom and individualism, the factory system, the extension of foreign commerce, and the use of credit. They are practically confined to western Europe and the more advanced American countries. Several crises, notably those of 1836–39, 1857, and 1873, deserve to be called international in extent. The chief crises in American history have been those of 1819, 1837, 1857, 1873, 1893, and 1907.

The crisis of 1819 may be considered as the climax of the activity in manufacturing and domestic trade caused by the interruption of foreign trade extending from the embargo

(*see*) of 1808 to the close of the war with England in 1815. In this period capital and enterprise turned to the task of opening the West. The introduction of steamboats on western waters in 1811, created enthusiasm with reference to the opening of the great interior region. The best measure of the speculative enthusiasm of the period is probably the record of public land sales:

Year	Acres
1813	270,000
1815	1,120,000
1817	2,160,000
1819	5,470,000
1820	820,000

The organization of the United States bank, and of many private banks, provided credit facilities which were used, and eventually abused, in financing these speculations.

The crisis of 1837 has been attributed to excessive internal improvements and to inflated banking. When the United States bank (*see* BANK OF UNITED STATES, SECOND) failed to secure a renewal of its charter, government deposits, including a large surplus revenue, were distributed to "pet banks," and served these unregulated state institutions as the basis for an over-issue of paper currency. This served, when supplemented by foreign advances, to produce a great expansion of credit. Speculation centered upon state-financed systems of highways and canals, which now reached their climax, and upon public land. The land sales for five years were as follows:

Year	Acres
1833	3,800,000
1834	4,600,000
1835	12,500,000
1836	20,000,000
1837	5,000,000

The most important result of the long suspension of specie payments which followed this crisis was the establishment of the independent treasury (*see*) system.

The crisis of 1857 has often been laid to the stream of gold which poured upon the Union from California, and caused the belief that no undertaking was too great to be carried through by the fortunate nation. It is not easy to say what caused the crisis to come at the moment it did, except that speculation had run its natural course. Excessive railroad building has been charged against the period but the mileage constructed in 1858 or 1859 exceeded that of 1856 or 1857. Two events may be mentioned. In 1856 California became independent of outside, agricultural supplies, and a fleet of large ships which had been built for the California trade was thrown out of use. At the same time the Crimean War ended and the demand which it had caused for American products ceased.

The speculation which led to the crisis of 1873 has been attributed to several causes: (1) the industrial activity which always follows a successful war; (2) the stimulus afforded by the continuation of the war tariff; (3) excessive railway building, in advance of settlement, in the west, and as competitive lines in the east.

In 1893 the creditor class in America became apprehensive of a legal scaling-down of debts through a change from the gold to the silver standard. Liquidation was insisted upon by the prudent, and the gold reserve of the Treasury was depleted through an endless chain based upon paper currency in circulation. The depression in Europe prevented foreign capital coming to our aid, and, indeed, caused American railway securities to be dumped upon our markets and a returning stream of gold to leave our shores in payment for them. At the same time good crops abroad lessened the demand for our products. The fear of tariff revision contributed to create a feeling of uncertainty with reference to the future of the rather excessive investments which had been made in manufacturing.

The crisis of 1907 has been called the "panic of undigested securities." The organization of great consolidated corporations began in earnest in 1899, and during the five years, 1899–1903, there were, according to Mr. John Moody, 225 trusts formed. The following years being prosperous, small investors employed their money locally in familiar forms, while capitalists, knowing the financial methods used in organizing the new concerns, left their securities untouched in the hands of the underwriting syndicates. By 1907 the insurance investigations, the Lawson articles, the activity of the Federal Government under Roosevelt, and, finally, the events of the "silent panic," made this load of unmarketed securities too heavy to be carried further. To add to these difficulties a weak spot was found in the banking machinery of the country. The trust companies were doing a banking business without observing the proper ratio between cash and deposits. In the years 1906 and 1907 this ratio was, for the national banks, between 15 and 16 per cent, for state banks it was over 8 per cent, while for trust companies it was only 3.5 per cent, and 4.9 per cent, respectively.

See under BANKING; BANKRUPTCY; BANKS.

References: T. E. Burton, *Financial Crises* (1902); E. D. Jones, *Economic Crises* (1900), contains bibiliographies: H. Herkner, "Krisen" in *Handwörterbuch der Staatswissenschaften* (1892), IV; I. Ryner, *Crises of 1837, 1847 and 1857* (1906); W. J. Lauck, *The Causes of the Panic of 1893* (1907); R. W. Babson, *Business Barometers* (2d ed., 1910); A. D. Noyes, "Commercial Panics" in *Atlantic*, XCVIII (1906), 433–445, "Year after the Panic of 1907" in *Quart. Jour. of Economics*, XXIII (1909), 185–212. EDWARD D. JONES.

CRISP, CHARLES FREDERICK. Charles F. Crisp (1845–1896) was born at Sheffield, England, January 29, 1845. He removed to Geor-

gia, and on the outbreak of the Civil War entered the Confederate army, becoming a lieutenant. He remained in active service until 1864, when he was taken prisoner, and was held as such until the close of the war. In 1866 he was admitted to the bar, and from 1872 to 1877 was solicitor general for the southwestern judicial circuit of Georgia. In 1877 he was made judge of the supreme court of Georgia for the same circuit, retaining the office for five years. In 1883 he was elected a Representative in Congress, where he sat until 1896. From 1891 to 1895 he was Speaker of the House. He was a strong advocate of tariff reduction, and in the silver agitation sided with the free coinage element among the Democrats. In 1896 he received the Democratic nomination in the Georgia legislature for Senator, but died at Atlanta, October 23, before the election. See DEMOCRATIC PARTY; SPEAKER OF THE HOUSE. **References:** E. E. Sparks, *National Development* (1907); D. R. Dewey, *National Problems* (1907) M. P. Follett, *Speaker of the House* (1896). W. MacD.

CRITTENDEN, JOHN JORDAN. John J. Crittenden (1787–1863) was born at Versailles, Ky., September 10, 1787. In 1809–10 he was attorney general of Illinois Territory, and served for a time in the War of 1812. From 1811 to 1817 he was a member of the Kentucky legislature, part of the time as speaker. He was then elected to the United States Senate, but resigned his seat in 1819. He entered political life as a Republican, but later identified himself with the National Republicans and Whigs. In 1827 he was appointed United States district attorney, from which office he was removed by Jackson in 1829. In 1835 he was again elected United States Senator, served as Attorney General in the short-lived Cabinet of W. H. Harrison in 1841, and was then appointed Senator, and was reëlected in 1843. He resigned his seat in 1848 to become governor of Kentucky, and in 1850 resigned the governorship to become Attorney General under Fillmore. From 1855 to 1861 he was again Senator. He opposed secession, supported the Constitutional Union party in 1860, and worked earnestly for compromise. From 1861 to 1863 he was a member of the House. He died at Frankfort, July 23, 1863. See WHIG PARTY. **References:** A. N. Coleman, *Life of John J. Crittenden* (1871); J. G. Nicolay and J. Hay, *Abraham Lincoln* (1898), *passim.* W. MacD.

CROP REPORTS. Knowledge of the condition of the growing crop is of much importance in understanding and regulating trade in agriculture produce, and in enabling grower and dealer to guide their personal business movements. Extended over a series of years on a carefully considered and harmonious basis, crop-reporting may assume great permanent statistical value, and indicate climatic and other influences on agricultural production.

It is now considered to be a province and function of government to collect statistics of the growing and moving crop, and to disseminate widely the results of the inquiry. The United States Government, in 1862, passed a statute under which, in 1863, a beginning was made; and in 1865 provision was made for such reporting with an appropriation of $20,000. For the year ending June 30, 1912, the amount was $232,000.

In Canada, the organization for collecting agricultural statistics dates from the year 1905. In one form or another, the reporting of crops is undertaken by the governments of Great Britain, France, Germany, Austria-Hungary, Russia, Sweden, Argentina, Australia, India, and some others. The work has been stimulated by the establishment, in 1908, of the International Agricultural Institute with headquarters at Rome.

The federal crop-reporting service is in charge of the Bureau of Statistics in the Department of Agriculture. This bureau has divisions of domestic crop reports, production and distribution, research and reference, each in charge of a statistical scientist, the entire bureau being under the direction of a statistician in chief. It has a special field service of 20 traveling agents; and there are 47 state statistical agents; about 2,800 county agents or correspondents under each of whom are assistants; about 32,000 township correspondents; and many individual farmers, millers and others participate. The bureau issues detailed monthly crop reports. Several of the states also collect crop data and publish periodical reports, as Ohio, Michigan, Illinois, Wisconsin, Iowa, Missouri, Nebraska, Kansas, Kentucky, Tennessee, Oklahoma, in which the methods and results differ considerably. Many societies also collect special crop indications and furnish the results to members.

In Canada the crop-reporting is in charge of the Census and Statistics Office of the Department of Agriculture. This office makes the regular 10-year census of the Dominion, including entire productive resources. In the rapidly growing provinces of Manitoba, Saskatchewan, and Alberta a 5-year census is taken. The office began its crop-reporting work in 1908 on a regular monthly basis. A body of agricultural correspondents has been appointed, and the office is aided by the experimental farms and stations, dairy and cold storage branch, and seed branch.

See AGRICULTURE, RELATIONS OF GOVERNMENT TO; INSPECTION AS A FUNCTION OF GOVERNMENT.

References: E. H. Godfrey, "Crop Reporting Methods and the Collection of Agricultural Statistics" in Dept. of Trade and Commerce, Ottawa, *Census and Statistics Monthly* (1912),

"Methods of Crop Reporting in Different Countries" in *Royal Statistical Soc. Journal*, LXXIII (1910), Pt. iii; H. D. Vigor in *ibid.*, LXXIV (1911), Pt. vii; Umberto Ricci in *International Statistical Instiute* (1911); U. S. Dept. of Agriculture, Bureau of Statistics, *Reports and Circulars* (rev., 1911).

L. H. Bailey.

CROWN IN THE BRITISH POLITICAL SYSTEM. From time immemorial all acts of government in England were done in the name of the ruler. It was the prerogative of the Crown to make treaties, control the army and navy and the public service, grant titles of honour, and perform all other acts of government. When Parliament gained control the old forms were not changed. All acts of government are still acts of the Crown and the term has come now to mean the executive government. In this sense the Crown appoints all civil and military and naval officers, the judges, and the bishops in the established church. It expends the public money, summons and dismisses Parliament, grants pardons, treats with foreign powers, makes war or peace, and confers titles of honor. To judge by the forms alone it might be supposed that Great Britain is ruled by a despotic sovereign. Without any reference to Parliament, the Crown could disband the army and navy, sell stores and ships of war, declare war, make peace by ceding national territory, pardon all offenders, and make every one, male or female, in the British Empire a peer. In fact, however, the prerogatives of the Crown are exercised by ministers who remain in office only as long as they command the support of the House of Commons. "The King can do no wrong"; if wrong is done the king's ministers are responsible for it to the law. None the less a certain real authority belongs to the king. His ministers must consult him on all important business, and in such consultations his opinions may influence their deliberations. Queen Victoria and King Edward VII were both well versed in foreign affairs and no doubt influenced the policy of their ministers. Their influence was, however, indirect and private. In the administrative affairs of the nation the king takes only a nominal and passive part. He can not now place any veto upon measures enacted by both Houses of Parliament. Parliament even determines his right to the throne. Thus the Crown no longer possesses any executive authority independent of the king's ministers, responsible to Parliament. See Cabinet Government; Cabinet Government in England; Constitution in the British Sense; Constitution, Law and Custom of; Executive System of Great Britain; House of Commons; Parliament; Prime Minister. References: W. Bagehot, *The English Constitution* (1st ed., 1872), chs. ii, iii; A. L. Lowell, *The Government of England* (1908), I. 16–52; W. R. Anson, *Law and Custom of the Constitution* (1897–1908).

G. M. W.

CRUEL AND UNUSUAL PUNISHMENT. See Punishments, Cruel and Unusual.

CRUELTY TO ANIMALS. Wanton cruelty to animals, especially when a public nuisance, is an offense at common law.

The earliest English statute (1822) was the Martin Act (3 George IV c. 71) "to prevent cruel and improper treatment of cattle" It was amended, 1835, to cover bulls, dogs and lambs as cattle and to prohibit the baiting or fighting of dogs, bulls, bears, badgers and cocks, and extended in 1849 and again in 1854 when the use of dogs as beasts of burden was prohibited. Wild animals were included in 1900 (63–4 Victoria c. 33) and all animals in captivity covered except animals being killed for food or vivisected under the terms of the Vivisection Act of 1876. Certain animals are given special protection against vivisection, and in all cases the operator must be licensed, the object must be the discovery of knowledge and not merely the attainment of manual skill, the animal must be wholly insensible during the operation and killed before sensibility returns if pain would result, unless the operator has a special and more highly restricted license to allow the animal to live in order to complete an experiment. Public exhibitions of experiments are forbidden.

Pennsylvania (March 31, 1860) made it a misdemeanor to "wantonly and cruelly beat, torture, kill or maim any horse or other domestic animal" but New York (April 19, 1866) enacted the first effective legislation, which has been a model for similar legislation in nearly all the states. Overdriving, overloading, torturing, cruelly beating, unjustifiably injuring, maiming, mutilating or killing any animal, wild or tame, neglecting to give or depriving it of necessary sustenance, food or drink, was made a misdemeanor, also to wilfully set on foot, instigate, engage in or in any way further an act of cruelty to any animal or commit any act tending to produce such cruelty. Pigeon shooting was exempted by special act in New York, 1875 to 1902. Much that the humane societies condemn—and to them the duty of enforcing the law has been largely entrusted both in England and America—the courts will not construe as wanton cruelty. Vivisection in America is not prohibited where it does not involve cruelty to vivisected animals and this is the assumption when done under the authority of a regular medical school or college.

Anti-cruelty societies were organized in England (1824) and in America (1866) when Henry Bergh incorporated "The American Society for the Prevention of Cruelty to Animals," and (1868) when George T. Angell in-

corporated the Massachusetts S. P. C. C. One hundred and forty-five such societies reported in 1912 to the American Humane Association, which seeks to federate anti-cruelty societies for animals and children; to educate school children in humane conduct and emphasize the economic as well as the sentimental motive for greater protection.

See CRUELTY TO CHILDREN.

References: R. C. McCrea, *The Humane Movement* (1910); B. K. Gray, *Philanthropy and the State* (1908); American Society for the Prevention of Cruelty to Animals and American Humane Association, *Annual Reports*. S. M. LINDSAY.

CRUELTY TO CHILDREN. Abandonment, neglect to provide food, clothing or shelter, abduction, excessive corporal punishment, exposure to physical dangers, or to immoral influences, prostitution and sodomy, are a few of the offenses against minors or children under specified ages now found on the statute books of all modern states. These laws and others which a broader concept of cruelty would include in the same category, such as the regulation of children on the stage, where liquor is sold, in dance halls and places of doubtful amusement, are usually enforced chiefly by societies for the prevention of cruelty to children, or by societies that combine this work with anti-cruelty work for animals (See CRUELTY TO ANIMALS). They possess special legal powers such as the right to prefer complaints before any court, act as guardian, retain children on commitment, and their officers and agents are peace officers.

The N. Y. Society for the Prevention of Cruelty to Children (1874) and the English Society (1884) which received a Royal Charter in 1895, have regarded their work as that of a special arm of government or police duty and not that of a charitable society interested in the promotion of child-helping activities. The work of all such societies, however, has been broadened by the juvenile court movement and the child labor committees with which they are gradually coöperating for the better protection of childhood.

See COURT, JUVENILE; CRUELTY TO ANIMALS. S. McC. LINDSAY.

CRUISERS. See ARMIES AND NAVIES, FOREIGN; NAVAL VESSELS.

CRUISING CONVENTION. After the suppression of the slave trade by Great Britain in 1806 that nation was anxious to induce other nations also to prohibit the slave trade, by allowing the great naval power of that country to be used to police the ocean. In the treaty of Ghent, in 1814, the United States promised to coöperate. A treaty for this purpose, negotiated in 1824, was not ratified by the Senate. In the Ashburton treaty (*see*) of 1842, provision was made for a joint cruising squadron, vessels showing the American flag to be dealt with by the American cruisers. The United States never carried out this agreement in good faith. The number of vessels was below the agreement and the administration was half-hearted. See ASHBURTON TREATY; SLAVE TRADE: **References:** W. E. DuBois, *Suppression of the Slave Trade* (1896), chs. ix, xi; J. B. Moore, *Digest of Int. Law* (1906), II, 914–951. A. B. H.

CUBA. The island of Cuba obtained its independence as a result of the long struggle against Spain and because of the Spanish American War of 1898.

The constitution was adopted February 21, 1901. The territory is made up of six provinces. Manhood suffrage prevails. The sovereignty is declared distinctly to be vested in the people of Cuba. The legislative body is composed of the chamber of representatives and the senate, the two constituting a congress. The senate is made up of four senators from each province selected for a period of eight years by the provincial councilors. It has powers similar to those of the United States Senate in many respects, sitting as a court of impeachment, confirming the nominations made by the president, and approving treaties. The chamber of representatives is made up of delegates chosen by popular vote. Congress is authorized to "enact the national codes and the laws of a general nature; to determine the rules that shall be observed in the general, provincial, and municipal elections; to issue orders for the regulation and organization of all services pertaining to the administration of national, provincial, and municipal government; and to pass all other laws and resolutions which it may deem proper relating to other matters of public interest," and do various other things of a general legislative character. The president is elected for a term of four years but no one shall be president for three consecutive terms. He is chosen with the vice-president by presidential electors. The constitution provides for secretaries of state, and for a judiciary composed of a supreme court and other tribunals established by law. It also provides for the general government of the provinces and for the government of municipal districts.

Agreeable to the understanding with the United States, there is a distinct provision (adopted June 12, 1901) in the constitution that the government of Cuba shall never enter into any treaty or compact with any other foreign power which will impair or tend to impair the independence of Cuba, nor in any way authorize or permit any foreign power to obtain by colonization or for military or naval purposes, or otherwise, lodgment in or control over any portion of the island. It also contains restrictions upon the power of assuming

or contracting a public debt and consents that the United States exercise the right to intervene for the preservation of Cuba's independence and the maintenance of a government adequate for the protection of life, property and liberty and for discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States.

The population at the census taken in 1911 was 2,161,622.

See CUBA AND CUBAN DIPLOMACY; PLATT AMENDMENT; SPAIN, DIPLOMATIC RELATIONS WITH.

References: *Am. Year Book, 1910,* 7284; *ibid, 1912,* 112; J. I. Rodriguez. *Am. Constitutions* (1905), II, 112–154. A. C. McL.

CUBA AND CUBAN DIPLOMACY

Cuba, the largest and most important island in the West Indies, was discovered by Columbus on his first voyage and remained a dependency of Spain until 1898. When we consider the commercial importance of the island, its unique strategic position, and the chronic discontent of its inhabitants, the wonder is that Spain should have retained her hold so long.

Danger of French or English Occupation.—Until the opening of the nineteenth century foreign intercourse with the Spanish colonies was strictly forbidden and all trade was confined to the mother country. Napoleon's overthrow of the Spanish monarchy in 1807 created the fear that he might seize all of the Spanish colonies; but such a step was prevented by his naval weakness. During the period 1819–1826 there was much talk of British annexation. When the Florida treaty was negotiated in 1819 the British press urged the occupation of Cuba as a natural and necessary off-set. The French invasion and occupation of Spain in 1823 added another argument in favor of British annexation. About the same time efforts were made to start an uprising in Cuba for the purpose of throwing off the Spanish yoke, but Cuba did not follow the example of the other Spanish colonies, and as a consequence there was danger of its being attacked as the last stronghold of Spanish power in America by the new republics of Mexico and Colombia. The status of Cuba was an unwritten part of the arguments for the Monroe Doctrine in 1823; and the diplomacy of the United States was exercised, in 1825, to prevent the proposed expedition from the main land to set Cuba free. In 1825 a large French squadron appeared in Cuban waters and excited the alarm of both England and the United States. Canning declared that Great Britain could not consent to Cuba passing into the hands of any great maritime power, and Clay, as Secretary of State, declared emphatically that "we could not consent to the occupation (of Cuba and Porto Rico) by any other European power than Spain under any contingency whatever."

During the period 1826–1845 the policy of the United States was practically to guarantee the island to Spain on condition that she would not sell to France or England. In 1840 when rumors of British occupation were revived, the American minister at the court of Spain was instructed as follows: "You are authorized to assure the Spanish Government, that in case of any attempt, from whatever quarter, to wrest from her this portion of her territory, she may securely depend upon the military and naval resources of the United States to aid her in preserving or recovering it." Daniel Webster, as Secretary of State, gave the same assurances to the Spanish Government in 1843.

Schemes of American Annexation, 1845–1860.—Between 1845 and 1860 annexation sentiment was strong in the United States, and schemes for accomplishing the object by purchase, by revolution and subsequent incorporation, and by forcible seizure were successively advocated. Under the administration of Polk, in 1848; James Buchanan, as Secretary of State, offered Spain $100,000,000 for Cuba, but the Spanish government indignantly rejected the offer. The failure of the purchase scheme was followed by the filibustering expeditions of General Lopez in 1850 and 1851. Although the American Government was not in sympathy with these movements, some two hundred Americans accompanied Lopez on his last expedition and succeeded in effecting a landing on the coast of Cuba; but they were defeated and about fifty, including Lopez, were captured and shot When news of these executions reached New Orleans, from which port the expedition had sailed, a mob attacked the Spanish consulate, tore the flag in pieces, and burned the consul in effigy.

Proposed Tripartite Agreement, 1852.—The feeling between the American and Spanish governments was so intense that it was feared that the United States would resort to forcible annexation. England and France, acting in response to the suggestion of Spain, made a formal proposal to the United States in 1852 that the three powers should enter into an agreement against the exclusive control of Cuba by any one of them. To this proposal Secretary Everett replied that he considered the condition of the island mainly an American question and that the interest of the United States was incomparably greater than that of

either England or France. The proposal was, therefore, rejected.

Mission of Soulé.—The annexation of Cuba had now become a party issue and with the return of the Democratic party to power in 1853 the agitation of the question was renewed. The appointment as minister to Spain, of Pierre Soulé of Louisiana, a Frenchman by birth and education, who had been exiled for political reasons, created an unfavorable impression both in this country and abroad, for his views on the Cuban question were well known to be of a radical character, and Louis Napoleon advised the Spanish Government not to receive him. Mr. Soulé was not at first authorized to make any proposal for the purchase of Cuba, but he was instructed to negotiate a commercial treaty and to urge the necessity of allowing a "qualified diplomatic intercourse between the captain-general of that island and our consul at Havana, in order to prevent difficulties and preserve a good understanding between the two countries." The difficulty of settling disputes arising in Cuba had been the subject of repeated remonstrances on the part of the United States. The captain-general was clothed with almost "unlimited powers for aggression, but with none for reparation." Mr. Soulé was unable to secure a new commercial treaty or any improvement in the methods of diplomacy. He then secured the consent of the American government to renew the negotiations for the purchase of the island.

Case of the Black Warrior, 1854.—At this juncture war was nearly precipitated between the two countries by the seizure for a technical violation of the port regulations at Havana, of the *Black Warrior*, an American vessel which plied between Mobile and New York. A statement of the case was promptly forwarded to Mr. Soulé, who acted with unexpected zeal and demanded redress within forty-eight hours. The Spanish minister replied with characteristic evasion that whenever her Majesty's Government should have before it the authentic and complete data, which it then lacked, a reply would be given to the demand of the United States conformable to justice and right. Meanwhile the aspects of the case were greatly changed by a private agreement between the Havana officials and the owners of the *Black Warrior*, by which the ship and cargo were restored. After the return of Mr. Soulé to the United States this case was finally settled by the payment of an indemnity and the disavowal of the acts of the Havana officials.

Ostend Manifesto.—In August, 1854, Mr. Soulé was directed by Mr. Marcy to confer with Mr. Mason and Mr. Buchanan, United States ministers at Paris and London, with reference to the negotiations in regard to Cuba. It was believed that France and England were using their influence to prevent a sale of the island to the United States. This suggestion led to the celebrated conference between the three ministers at Ostend in October, 1854. Instead of discussing the diplomatic aspects of the question they drew up a recommendation to their government, which became known as the Ostend Manifesto, in which they advised that Spain be offered $100,000,000 for Cuba, and that, in case of her refusal to sell, the United States should seize the island, if the welfare and safety of the Union demanded it. Secretary Marcy politely but firmly repudiated the recommendations of the report and Mr. Soulé promptly resigned his mission. The manifesto, however, had the desired effect of helping to secure for James Buchanan the Democratic nomination for the presidency in 1856. The Democratic platform of that year was strongly in favor of the acquisition of Cuba, while the Republican platform stigmatized the Ostend Manifesto as the highwayman's plea. The Cuban question was soon overshadowed by secession, and did not become of importance again until Grant's administration.

Ten Years' War, 1868–1878.—In 1868 the "Ten Years' War" began in Cuba. The insurgents had few arms, but they counted on aid from the United States through the Cuban Junta in New York and hoped to win the recognition of the American Government. President Grant at first offered mediation on the basis of independence, but his terms were refused by Spain. He then seriously considered recognizing the insurgents, but this step was stayed by Secretary Fish. In 1873 the *Virginius* episode (*see*) came near precipitating war. Finally, in 1875, Grant threatened intervention, but the proposal to intervene was not favorably received by England and the other European powers, to whom, contrary to the Monroe Doctrine, he submitted the question. From the close of the "Ten Years' War" in February, 1878, until the insurrection of 1895 the policy of the United States was mainly concerned with urging upon Spain the establishment of a more liberal form of government through independence or autonomy, the promotion of commercial intercourse, and the protection of the persons and property of American citizens in Cuba.

Insurrection of 1895–1898.—The insurrection that broke out in February, 1895, and continued until the intervention of the United States in April, 1898, presented in a more aggravated form the same features as the "Ten Years' War." President Cleveland warned Spain that the forbearance of the United States had its limits, and President McKinley offered mediation, but the struggle dragged on from bad to worse until the blowing-up of the *Maine* in Havana harbor February 15, 1898, rendered a continuance of the existing condition of affairs intolerable. On April 20, Congress passed a joint resolution directing

the President to demand the withdrawal of the land and naval forces of Spain from Cuba and Cuban waters and the relinquishment by Spain of all authority and government in the island. At the same time Congress diselaimed any "intention to exercise sovereignty, jurisdiction or control over said island except for the pacification thereof."

American Occupation of Cuba, 1898–1902.—The United States declined to turn the Island over to the Cuban Republic. When, therefore, the Spanish troops and officials evacuated Havana January 1, 1899, the government of the island was transferred to a military governor representing the President of the United States. The military government undertook, at onee, the task of restoring order, relieving distress, and putting the cities of the island in first-class sanitary condition. The work performed by General Leonard Wood and his assistants was remarkable both for its scope and thoroughness. Beginning with the municipalities, they had to organize a complete system of insular government in all departments. As a preliminary step to the establishment of a representative government a census was taken, probably the first accurate census ever taken in Cuba. The entire population was found to be 1,572,792. The census taken in 1907 showed that the population had increased to 2,048,980. Of this number 59.8 per cent were native whites, 29.7 per cent of negro and mixed blood, 9.9 per cent foreign born whites, and less than 0.6 per cent Chinese.

Republic of Cuba.—After organizing an electorate, a constitutional convention was called by General Wood, and a constitution adopted. May 20, 1902, the new government entered on its independent career with Tomas Estrada Palma as president. Future political relations with the United States were defined by the so-called Platt Amendment (*see*), which was made a part of the Cuban constitution. The Congress of the United States failed to make any commercial concessions to Cuba prior to the withdrawal of Ameriean troops. The President, however, proceeded to negotiate a reciprocity convention, but this measure was opposed by the beet-sugar interests in this country and did not receive the approval of Congress until December 16, 1903.

In August, 1906, following the reëlection of President Palma, an insurrection broke out for the purpose of overthrowing his government. Secretary of War Taft was sent to the island by President Roosevelt with a view to reconciling the contending factions. Failing in this, he assumed control of affairs September 29, 1906, and proclaimed a provisional government for the restoration of order and the protection of life and property. This second American administration of Cuban affairs came to a close January 28, 1909, when José Miguel Gomez was inaugurated second president of the republic.

See Cuban Insurrections; Protectorates; Spain, Diplomatic Relations with; Wars of the United States; West India Trade.

References: J. M. Callahan, *Cuba and Int. Relations* (1899); F. E. Chadwick, *Relations of the U. S. and Spain: Diplomacy* (1910); A. B. Hart, *Foundations of Am. Foreign Policy* (1901), ch. iv; J. H. Latané, *Diplomatic Relations of U. S. and Spanish America* (1900), ch. iii, *America as a World Power* (1907), chs. i, x; L. Wood, Military Governor of Cuba, *Report* (1901); J. B. Moore, *Int. Arbitrations* (1898), II, 1007–1069; bibliography in A. B. Hart, *Manual* (1980), 194; Library of Congress, *List of Books Relating to Cuba* (1898); H. von Holst, *Hist. of the U. S.* (new ed., 1899), IV, 252–254, V, 19–37; President Franklin Pierce, "Special Message, March 15, 1854" in Senate Committee on Foreign Relations, *Report, Aug. 3, 1854* (in *Compilations of Senate Reports*, VI, 119).

John H. Latané.

CUBAN INSURRECTIONS, 1868–1898. From 1850 on there were some filibustering expeditions with the independence of Cuba as an object; but the first spontaneous movement for the independence of Cuba was the "Ten Years' War" which broke out in 1868 shortly after the begining of the revolution in Spain. The insurgents were poorly armed and could not withstand the Spanish troops in the field. Hence they carried on a guerilla warfare, while the Spanish authorities, on their part, resorted to harsh and cruel methods of suppression. Both sides were guilty of outrages, the property of foreigners was confiscated and destroyed, and large parts of the island were desolated. The struggle finally came to a close in 1878 with liberal promises of reform on the part of Spain, but these promises were never carried out in good faith.

In February, 1895, the second insurrection against Spanish rule began, and soon developed the same features as the "Ten Years' War." The policy of the revolutionary chief, Maximo Gomez, was to fight no pitched battles, but to keep up incessant skirmishes, to devastate the country, and to destroy every possible source of revenue, with the end in view of either exhausting Spain or of forcing the intervention of the United States.

General Weyler arrived in Havana in February, 1896, as captain general, and within a week inaugurated a "reconcentration" policy; *trochas* were drawn around the garrisoned towns and the inhabitants of the country districts were ordered by proclamation to concentrate within these lines within eight days under penalty of being treated as rebels. The women and children thus herded together without means of earning a livelihood suffered untold miseries and died off by the thousand. The United States was greatly embarrassed by numbers of Cubans who had sought natur-

alization in the United States merely to return to the island and claim a privileged status as American citizens, while others worked out their revolutionary schemes on American soil.

See Cuba and Cuban Diplomacy; Filibusters to Aid Insurrections.

References: J. B. Moore, *Digest of Int. Law* (1906), VI, 61–210; J. M. Callahan, *Cuba and Int. Rels.* (1899), 364–497; J. H. Latané, *Dipl. Rels. of U. S. and Spanish America* (1900), 137–175. John H. Latané.

CUMBERLAND ROAD. The Potomac River furnishes a natural route from the sea to the eastern escarpment of the Alleghenies; thence over the mountains to the tributaries of the Monongahela was an ancient Indian trail called Nemacolin's Path. In 1755 Braddock's army, pushing westward from Fort Cumberland, near the head of the Potomac, closely followed this route, constructing a narrow wagon road, henceforward known as Braddock's Road, which worked westward across the Little Monongahela River to Great Meadows, and thence northwest to Fort Duquesne.

Toward the end of that war another road was constructed from Carlisle, through Bedford and Fort Ligonier, to Pittsburg; but Braddock's Road was the direct line from Maryland and Virginia to the navigable Monongahela. As a result of the temporary surplus of 1808, Jefferson and Gallatin were led to urge a great system of internal improvements including a road on the Braddock route, which from its eastern point of departure came to be called the Cumberland Road, or (particularly its western extension) the National Road.

The direct line of survey was subjected to a deflection northeastward to Uniontown so as to make it easier to reach Pittsburg; but the road thence proceeded to Wheeling on the Ohio River. The surveys, especially on the eastern end are rather crude, and there are many long and steep hills. It was necessary to cross two divides, each about 2500 feet above the sea, and a third divide between the Monongahela and the Ohio. A solid roadbed of stones fitted together was made, and all the bridges, except at Brownsville, the crossing of the Monongahela, were of stone. A good road was constructed on the rather rough foundations, and was open for traffic to the Ohio River in 1818. As it at once began to wear out under the heavy travel, tolls were finally laid under act of Congress and large appropriations were made for repair.

The building of the road by the Federal Government through the territory of Maryland, Pennsylvania, and Virginia, gave rise to a constitutional snarl, but the consent of the states concerned was obtained for the construction of the road. May 4, 1822, President Monroe vetoed a bill for federal toll houses and toll gatherers, on the ground that the Constitution did not authorize the construction of such improvements by the nation; but appropriation bills continued and he signed several of them.

When the road was once in successful operation there came an irresistible pressure to extend it westward, and a route was surveyed through Columbus and Indianapolis, as far as Vandalia, Illinois. It was built from opposite Wheeling, to a point beyond Columbus, to the westward, and some sections of it in Indiana and Illinois were completed. No work was done after 1838. The states of Missouri and Illinois quarreled as to whether the terminus should be opposite St. Louis or Alton, and the road was never finished. Eventually the whole road from Cumberland westward was turned over to the states within whose limits the various sections lay.

The total federal expenditures on the Cumberland Road were in the neighborhood of $6,300,000. It was, for about twenty years, an artery of travel for livestock, freight, and passengers, but after the completion of the Panhandle Railroad through Ohio (1855), and the Baltimore & Ohio through Maryland and Virginia (1853), long sections fell almost into disuse. From 1910 to 1912 the states from Cumberland to Wheeling were putting it in order again, so that it might serve as an automobile highway, for which it is well adapted because of the picturesque country and the interest of the roadway.

See Good Roads Movement; Post Roads; Roads; Internal Improvements, Constitutional Status of.

References: K. C. Babcock, *Rise of Am. Nationality* (1906), 251–258; F. J. Turner, *New West* (1906), 228–235; J. S. Young, *Cumberland Road* (1904); A. B. Hulbert, *Historic Highways* (1905), X ch. 1; J. B. Seabright, *Old Pike* (1894); E. C. Nelson, "Presidential Influence" in *Iowa Journal of Hist. and Pol.*, IV (1906). Albert Bushnell Hart.

CUMULATIVE VOTING. See Voting, Cumulative.

CURATIVE STATUTE. An act of a legislature, designed to cure or validate court proceedings, or the acts of public officers, or to remove or remedy the defects in deeds or contracts, which would otherwise be void or ineffective, for failure to comply with the requirements of the law. H. M. B.

CURRENCY. This term may be applied to all forms of money which are current as a medium of exchange. In popular use in the United States it now usually refers to paper money of any kind in contradistinction to silver or gold coins. The National Banking Act of 1863 is known as the National Currency Act, and the supervising officer of the nation-

al banking system as the Comptroller of the Currency. See PAPER MONEY IN THE UNITED STATES. Reference: Comptroller of the Currency, *Annual Reports*. D. R. D.

CURRENCY ASSOCIATIONS. In the financial crisis of 1907, as on some previous occasions, the New York Clearing House issued certificates on the credit of the associated banks, but protected by securities in the vaults of banks which without this relief would probably have failed. This issue was extra-legal, and irregular; hence by the Aldrich-Vreeland Act of May 30, 1908, ten or more national banks situated near each other and having a capital and surplus taken together of not less than $5,000,000 could form a National Currency Association, with authority to issue notes protected by a reserve of bonds or commercial paper—such notes to pay a tax of 5 per cent for the first month of circulation and 1 per cent for each month thereafter up to a maximum of 10 per cent.

In 1910, a few such associations were formed in New York City, but the whole plan was checked by bringing forward the so-called Aldrich plan for a National Reserve Association, upon which reports were prepared by the National Monetary Commission (*see*). No further action has been taken down to May, 1913.

See under BANKING; BANKS; PAPER MONEY.

References: *Am. Year Book, 1910*, 338–342, and year by year; National Monetary Commission, *Reports,* 1908.

ALBERT BUSHNELL HART.

CURRENCY, CONTINENTAL. This term is applied to the bills of credit or paper money issued by the Continental Congress during the Revolutionary War. Between June 22, 1775, and November 29, 1779, there were 40 different emissions, amounting to $241,552,780. These bills were simply promises to pay, based upon the pledge of Congress to redeem in "Spanish milled dollars, or the value thereof in gold or silver," with, however, no date assigned for redemption.

The reason for their issue was obvious: the Continental Congress had no fiscal powers; it could not secure the assent of the states to levy taxes; nor was there sufficient faith in the ultimate success of the Revolution to enable it to borrow in large sums. Congress endeavored to persuade the states to redeem these bills by apportioning amounts according to population. The states instead of heeding these requests increased the difficulty by issuing notes of their own. Many of the states, however, made the continental notes legal tender, while Congress denounced as disloyal all persons who refused to receive the bills.

The notes quickly depreciated in value; at the begining of 1779 the value of the currency in specie was 8 to 1, and at the end of the year 38½ to 1. On March 18, 1780, Congress recognized its inability to maintain their value and provided for the acceptance of notes in place of silver at the rate of 40 to 1. Further efforts were made to secure redemption by the states through taxation, but to little purpose. The ratio fell to 100 to 1 in 1781, and in the funding act of 1790, which provided for all forms of indebtedness, the notes, so far as presented, were turned in at this valuation. It is estimated that for the issue of 241 millions, Congress received in supplies and services the value of about 50 millions, specie.

See COINAGE AND SPECIE CURRENCY; PAPER MONEY IN THE UNITED STATES.

References: C. J. Bullock, *Monetary History of the U. S.* (1900), 60–78; H. White, *Money and Banking* (1896), 134–148; F. A. Walker, *Money* (1883), 326–366; D. R. Dewey, *Financial Hist. of the U. S.* (1903), 36–43.

DAVIS R. DEWEY.

CURRENCY, ELASTICITY OF THE. See ELASTICITY OF THE CURRENCY.

CURRENCY, FRACTIONAL. The name given to paper money of small denominations issued during the Civil War. Owing to the suspension of specie payments in 1861 silver coin of even the smaller denominations disappeared from circulation, causing great inconvenience to retail trade. Postage stamps, tokens, and the small notes of local governments and even of individuals freely circulated until Congress authorized the issue of postage currency; and (March 3, 1863) specifically provided for the issue of fractional notes which at first bore a device imitating postage stamps, and often called "shin plasters." These notes were issued in denominations 3, 5, 10, 25 and 50 cents, and were exchangeable in any quantity for United States notes. The total volume was limited to $50,000,000.00. The 3 and 5 cent notes were replaced in 1865 and 1866 with new coins, and in 1876 the outstanding fractional currency was called in and redeemed. Fifteen millions worth, however, was not presented—probably most of it has been destroyed or lost. Silver coins were substituted. See COINAGE AND SPECIE CURRENCY IN UNITED STATES; COINAGE, SUBSIDIARY; PAPER MONEY IN THE UNITED STATES. Reference: M. L. Muhlemann, *Monetary and Banking Systems of the U. S.* (1908), 49. D. R. D.

CURRENCY, REDEMPTION OF. See REDEMPTION OF CURRENCY.

CUSHING, CALEB. Caleb Cushing (1800–1879) was born at Salisbury, Mass. January 17, 1800. He was admitted to the bar in 1822, sat in the state house of representatives in 1825, 1833–34, 1846, and 1850, and was state senator in 1826. From 1835 to 1843 he was a Whig Representative in Congress. In

the breach between Tyler and the Whigs he sided with Tyler, and was thenceforth classed as a Democrat. In 1843 he became commissioner to China, and in 1844 negotiated the first treaty between that country and the United States. He favored the Mexican War, and raised a regiment in Massachusetts for the service. In 1852 he was appointed a justice of the Massachusetts supreme court, resigning the next year to become Attorney General under Pierce. He was chairman of the Democratic national convention at Charleston in 1860, and later supported the Baltimore nomination of Douglas. In 1866 he was one of the three commissioners to codify the federal laws. He was counsel for the United States before the Geneva tribunal in 1871, and from 1874 to 1877 was minister to Spain. He died at Newburyport, Mass., January 2, 1879. His best known writing is *The Treaty of Washington* (1873). See DEMOCRATIC PARTY; MASSACHUSETTS. References: J. W. Foster, *Century of Am. Diplomacy* (1900); A. B. Hart, *Foundations of Am. Foreign Policy* (1901); J. F. Rhodes, *Hist. of the U. S.* (1893–1905), I-VI.

W. MacD.

CUSTOMS APPEALS, COURT OF. See COURT OF CUSTOMS APPEALS.

CUSTOMS, DIVISION OF. The Division of Customs is one of the divisions of the United States Treasury Department (*see*). The customs service includes the collecting officers at the ports, and the surveyors located in internal districts to whom importations may be shipped in bond. The Customs Division passes upon questions of the interpretation of the tariff law, subject, so far as the classification of imports and appraisal is concerned, to appeal to the court of customs appraisers. See TARIFF ADMINISTRATION. References: Secretary of the Treasury, *Annual Report*; J. A. Fairlie, *National Administration of the U. S.* (1905), 97–105.

A. N. H.

CUSTOMS DUTIES, RATES OF. Every tariff act provides for the imposition of duties measured according to value or some unit of quantity either ad valorem, specific (*see*), or compound (*see*) respectively. See TARIFF RATES.

D. R. D.

CUSTOMS FRAUDS. See PASSENGER'S BAGGAGE, DUTIES ON; SMUGGLING; SUGAR FRAUDS.

CUSTOMS HOUSES. See APPRAISAL OF IMPORTED GOODS FOR DUTIES; REVENUE, PUBLIC, COLLECTION OF; TARIFF ADMINISTRATION.

CUSTOMS UNION. The old German Empire possessed no uniform commercial policy, each state regulating independently its own commercial affairs. As early as 1818, however, Prussia initiated a movement which issued eventually in the adoption by all the German states of a single tariff principle. Stimulated by the example of Prussia, the South German Customs Association was formed in 1828, and the Central German Customs Association later in the same year. These two bodies combined with the Prussian in 1834, to form the Prusso-German Customs Union, embracing 18 states and some 23 million inhabitants, under a single customs tariff. Certain other German states later allied themselves with this larger union until in 1854 the Customs Union covered a territory containing about 33,000,000 people. Certain portions of territory inconveniently located were not included, nor were the three Hanse cities, Lübeck, Hamburg and Bremen, though these latter might be absorbed at any time on their own request. Up to the founding of the North German Confederation, 1867, the Customs Union was regulated by a customs parliament, in which each state had a veto on legislation touching tariff matters affecting it. The whole territory of the Confederation was, however, on incorporation into the North German Bund, treated as a unit with a Bundesrath and Reichstag of its own. The affairs of the Customs Union were conducted by a Customs Parliament consisting of the Bundesrath and Reichstag of the Confederation, supplemented by chosen delegates from the south German states and members elected by the south German people. The power of veto gave place to majority rule. On entering the empire, 1871, the south German states ceased to be independent in tariff matters, and became an integral part of the expanded state. The members of the Customs Bundesrath and Reichstag were taken over by the empire, and all customs legislation was henceforth a part of imperial law. See GERMANY, FEDERAL ORGANIZATION OF. References: H. von Treitschke, *Deutsche Geschichte* (6th ed., 1897), III, 603, IV, 350 *et seq.*; H. von Festen-Packisch, *Geschichte des Zollvereins* (1869); W. Weber, *Geschichte des Zollvereins* (2d ed., 1872); Fr. Thudicum, *Verfassungsrecht des nordd. Bund. und des deutschen Zollvereins* (1870); A. Hoffmann, *Deutsches Zollrecht*, (1900), I.

BURT ESTES HOWARD.

CUT TICKET. A ticket or ballot made up of candidates from two or more parties. Before the adoption of the Australian ballot (*see*) it was the regular party ticket modified by "scratching" or by the use of "pasters" (*see*). Under the Australian ballot system, one votes a "split ticket" when he fails to vote a straight party ticket. See BALLOT.

O. C. H.

CZAR. A sobriquet bestowed by the Democrats upon Speaker Thomas Reed about 1890 because of his domination of the proceedings of the House. See SPEAKER OF THE HOUSE.

O. C. H.

D

DAGO. A name commonly applied in certain parts of the United States to a person of Italian, Spanish or Portuguese descent.

T. N. H.

DAKOTA. The territory of Dakota included land that came into possession of the United States in two ways. The Missouri valley, comprising most of the territory, was part of the Louisiana purchase (*see* LOUISIANA, ANNEXATION OF). The extreme north-eastern part of the territory, the Red River valley, was transferred to the United States by England, in 1818. In 1854 Nebraska territory was organized and included that portion of the old Louisiana purchase west of the Missouri River and its northern tributary, the White Earth River. Minnesota territory, organized in 1849, included not only the present state of Minnesota, but also all the territory east of the Missouri and White Earth rivers. In 1858, that portion of Minnesota territory east of the Red River became a state, leaving the remainder of the territory without organization. The bill providing for the organization of Dakota territory was signed by President Buchanan on March 2, 1861. March 17, 1862, the first territorial legislature met at Yankton in what is now South Dakota. A territorial university was established in 1863, and a similar institution in North Dakota, twenty years later. An agricultural college and five normal schools were provided for the southern part of the territory in 1881, and at the next session, 1833, a second agricultural college was established for the northern part. **See** NORTH DAKOTA; SOUTH DAKOTA.

O. G. L.

DALLAS, ALEXANDER JAMES. Alexander J. Dallas (1759–1817) was born in the island of Jamaica, June 21, 1759. He studied law at the Inner Temple, London, and in 1783 settled at Philadelphia, where in 1785 he was admitted to the bar. After the inauguration of the National Government under the Constitution, he identified himself with the Anti-Federalists and Republicans. From 1790 to 1801 he was secretary of state of Pennsylvania, and edited *The Laws of Pennsylvania, 1700–1801.* In 1798–99 he was one of the counsel for Senator William Blount of Tennessee, in the latter's impeachment trial. In 1801 he was appointed United States district attorney for the eastern district of Pennsylvania, an office which he retained until October, 1814, when he became Secretary of the Treasury under Madison. A bill to charter a second bank of the United States was advocated by him and passed by Congress in January, 1815, but was so altered as to be vetoed. He continued his advocacy and a second bill became law in April, 1816. During part of 1815 he was also Secretary of War *ad interim.* He resigned his secretaryship in 1816, and died at Trenton, N. J., January 16, 1817. **See** BANK OF THE UNITED STATES, SECOND; TARIFF POLICY OF THE UNITED STATES. **References:** G. M. Dallas, *Life and Writings of A. J. Dallas* (1871); *Reports of Cases* (rev. ed., 1830); R. C. Catterall, *Second Bank of the U. S.* (1903), ch. x, xi.

W. MACD.

DAMAGES. The indemnity or sum which the law will award in a suit brought for that purpose, for the compensation of injuries to the person, property or rights of the suitor.

H. M. B.

DAMAGES, CONSEQUENTIAL. The British neutrality proclamation of May, 1861, was for a long time considered a cause of the prolongation of the Civil War, and, therefore, was made the basis for claims for consequential damages later presented at Geneva, including pursuit of Confederate cruisers, decrease of trade in American vessels, increased insurance, prolongation of the war, and additional expense of prosecuting the war. Charles F. Adams, acting under instructions, adroitly planned a method of procedure for ruling out these incalculable claims by an extra-judicial opinion of the tribunal. **See** ALABAMA CONTROVERSY; ARBITRATIONS, AMERICAN; BLOCKADE; CONTINENTAL SYSTEM; FRANCE, DIPLOMATIC RELATIONS WITH; NEUTRAL TRADE; NEUTRALITY, PRINCIPLES OF. **References:** C. F. Adams, *C. F. Adams* (1900), 389–395, *Lee at Appomattox* (1903) ch. ii, *passim;* C. Cushing, *Treaty of Washington* (1873); J. B. Moore, *Int. Arbitrations* (1898), I, 623–647; bibliography in A. B. Hart, *Manual* (1908), § 190.

J. M. C.

DANGEROUS CALLINGS. It has been recognized by the modern legislation of all countries that many industries or occupations are so extra hazardous to the health or life of those employed, that they may be regulated under the police power, just as, for the same reason, the ordinary rights of property may be limited or restricted by the prohibition or regu-

lation of a nuisance to the general public. In most countries such extra hazardous occupations are held to involve complete state control of the industry and of the contracts made in carrying it out, which is fully exercised by the legislation of Belgium, France, Germany, and some other countries. In the United States, on the other hand, such regulation is in its infancy; and, indeed, the principle so far has been applied rather for the protection of the general public, as in limiting the continuous hours of service for railway engineers or telegraph operators, submitting them to examination for color blindness etc., etc. It is impossible and unnecessary to enumerate all such callings; they will vary in different countries, in different conditions as between city and country, north and south, even in different states. Not only conditions but hours of labor especially of women and children are frequently regulated by special legislation in such dangerous trades. **See** BUSINESS, GOVERNMENT RESTRICTION OF; CONTRACTING OUT OF LABOR LAWS; CONTRIBUTORY NEGLIGENCE; EMPLOYERS' LIABILITY; EXPLOSIVES, REGULATION OF; INDUSTRIAL INJURIES; LABOR, PROTECTION TO. **References:** U. S. Industrial Commission, *Reports* (1900), V, 43, 84, XVI, *passim;* F. J. Stimson, *Popular Law Making* (1910), 225–228. The laws of all the states on this and all labor matters are collected in the U. S. Commissioner of Labor, *22nd Annual Report* (1907); *Am. Labor Legislation Review*, I, II (1911).

F. J. S.

DANISH ISLANDS, PROPOSED ANNEXATION OF. Two efforts have been made by the United States to annex all or a part of the little group of Danish Islands in the West Indies. The first was part of Secretary Seward's policy of the expansion of American territory and influence; a treaty was signed October 24, 1867, for the cession of the two islands of St. Thomas and St. John. In accordance with the terms of the treaty a vote of the inhabitants entitled to the suffrage was taken in January, 1868, and was almost unanimous for annexation by the United States. In January, 1868 the Danish Government ratified the treaty, but the Senate of the United States declined to ratify and the transaction was not consummated.

January 24, 1902, a second treaty was signed for the cession of the three islands of St. Thomas, St. John and Sainte Croix, for a payment of five million dollars. The United States ratified this treaty, February 7, 1902, but by a tie vote in one of the houses of the Danish Rigsdag, ratification was not accepted.

See ANNEXATION; BOUNDARIES OF THE UNITED STATES, EXTERIOR; WEST INDIES, DIPLOMATIC RELATIONS WITH.

References: J. B. Moore, *Digest of Int. Law* (1906), § 123; *Sen. Reps.*, 55 Cong., 2 Sess., No. 816 (1899); F. Bancroft, *William H. Seward* (1900), II, ch. xlii. A. B. H.

DANISH SOUND DUES. "Upon immemorial prescription, sanctioned by a long succession of treaties with foreign powers," Denmark long collected duties on vessels passing through the sounds between the North Sea and the Baltic. The United States, early leading an opposition, asserted that navigation of straits connecting open seas was free to all. By the treaty of 1826, Article V, it was provided that "Neither the vessels of the United States nor their cargoes shall, when they pass the Sound or the Belts, pay higher or other duties than those which are or may be paid by the most favored nation."

This treaty was terminable after ten years on one year's notice; and the opposition of the United States was so pronounced that in 1855 such notice was given. The United States made it clear that it would not pay for the privilege of using the maritime highway connecting two seas, but was willing to pay its share for the upkeep of the "lights, buoys and pilot establishment." The treaty of 1857, with Denmark, capitalized these aids to navigation at $393,011.

See BAYS AND GULFS, JURISDICTION OF; HIGH SEAS; MARE CLAUSUM; WATER BOUNDARIES AND JURISDICTION.

References: R. Phillimore, *Int. Law* (1879–1888), I, 254; J. B. Moore, *Digest of Int. Law* (1906), I, 659. GEORGE G. WILSON.

DARK AND BLOODY GROUND. An expression much used in the early days of western expansion with reference to Kentucky, suggesting the horrors of the early Indian wars in that state. O. C. H.

DARK HORSE. A not widely known person, unexpectedly brought forward as a candidate in a nominating convention, usually for the purpose of breaking a deadlock between two or more well known candidates. His usual characteristics are respectability and mediocrity. James K. Polk (*see*) was the first "dark horse" candidate for the presidency.

O. C. H.

DARTMOUTH COLLEGE CASE. In the state courts of New Hampshire the validity of a statute amending the charter of Dartmouth College (granted by the crown of England in 1769) was questioned in an action brought by those who claimed to be trustees under the original charter against the secretary and treasurer appointed by those claiming to be trustees under the amended charter, on the ground that such legislation deprived the corporation of its property and franchises otherwise than by the "law of the land" as guaranteed by the state constitution, and on the further ground that it impaired the obligation

of a contract in violation of the provision of the Federal Constitution. From a decision of the highest court of the state sustaining the legislation on both grounds an appeal was taken to the Supreme Court of the United States which held the statute to be invalid as an impairment of contract obligations (Trustees of Dartmouth College *vs.* Woodward, 1819, 4 *Wheaton* 518). The famous definition of "the law of the land," equivalent to due process of law (*see*), given by Daniel Webster in the course of his argument in this case, was not pertinent to the question on which the case was finally decided. In the opinions announced by a majority of the court it was held that the college was a private eleemosynary corporation and not a public corporation, and that, therefore, its charter, like that of any private corporation, constituted a contract protected against impairment by state legislation. This decision has been followed in a long line of cases; but it has been questioned from time to time on the ground that it gave undue sanctity to corporate charters. It has been limited in its effects, however, by holding that all corporate grants in derogation of sovereign powers must be strictly construed, that a state in granting corporate charters may, by legislation or constitutional provision, reserve the right to amend, and that corporations, like individuals, are subject to regulation in the exercise of the police power. This case, like that of Fletcher *vs.* Peck (*see*), illustrates the tendency of the Supreme Court to protect private property against state legislation under the contract clause before such protection was guaranteed under the due process clause of the Fourteenth Amendment.

See CHARLES RIVER BRIDGE *vs.* WARREN BRIDGE; CONSTITUTIONS, STATE, LIMITATIONS IN; CHARTERS, CORPORATION; CONTRACT, IMPAIRMENT OF; FRANCHISES, CORPORATION.

References: J. M. Shirley, *Dartmouth College Causes* (1879); Farrar's report of the case, published in 1819, reproduced in 65 *N. H. Reports* 473; J. Story, *Commentaries on the Constitution*, (5th ed., 1891), II, §§ 1392–1395; T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 391–400 and 392n; J. I. C. Hare, *Am. Constitutional Law* (1889), I, 606, 607; J. R. Tucker, *Constitution of the U. S.* (1899), II, 830, 835; W. W. Willoughby, *Constitutional Law* (1910), II, 893–905; E. Freund, *Police Power* (1904), §§ 24, 361–3; C. H. Hill, "The Dartmouth College Case" in *Am. Law Review*, VIII (1874), 189; Chas. Doe, "A New View of the Dartmouth College Case" in *Harv. Law Review*, VI (1892), 161 and 213, and in *Am. Law Review*, XXVII (1893), 71; Alfred Russell, "Status and Tendencies of the Dartmouth College Case" in *Am. Law Review*, XXX (1896), 321; W. P. Wells, "Dartmouth College Case and Private Corporations" in Am. Bar Assoc., *Reports* (1886), IX, 229; H. C. Lodge, *Daniel Webster* (1899), 72–106; W. S. G. Noyes, "Webster's Debt to Mason in the Dartmouth College Case" in *Am. Law Review*, XXVIII (1894), 356, and note, 440. EMLIN MCCLAIN.

DAVIS, CUSHMAN K. Cushman K. Davis (1838–1900) served one term (1866–1868) in the legislature of Minnesota, was United States district attorney for Minnesota from 1868 to 1873, and from 1874 to 1876 was governor of the state. From 1887 until his death he was a member of the United States Senate. A debater and committee worker of unusual ability, his principal service was rendered in the capacity of chairman of the Senate Committee on Foreign Relations (1897–1900) during the period of the Spanish-American War. He was an influential member of the commission by which the peace treaty of 1898 was negotiated at Paris. **See** CUBA AND CUBAN DIPLOMACY; REPUBLICAN PARTY; SENATE; WARS OF THE UNITED STATES. **References:** *Memorial Addresses* delivered in the Senate and House, *Sen. Docs.*, 56 Cong., 2 Sess., No. 230 (1901); *Protocols of Conferences between the Am. and Spanish Commissioners at Paris*, in *Sen. Docs.*, 55 Cong., 3 Sess., No. 62 (1899). F. A. O.

DAVIS, JEFFERSON. Jefferson Davis (1808–1889) was born in Todd County, Kentucky, June 1808 and died in New Orleans December 1889. He was educated at Transylvania University and the United States Military Academy. From 1828 to 1835 he served in the Army but resigned to become a cotton planter in Mississippi in the latter year. He won national reputation in the Mexican War at the battle of Buena Vista and on his return in 1847 he was sent to the United States Senate where he was an ardent southern advocate. A candidate for the governorship of his state in 1851 on a platform of resistance to the "settlement" of 1850, he was defeated and retired from politics; but in 1853 President Pierce made him Secretary of War, in which position he advocated enlargement of the standing army and the building of a Pacific railway. At the close of this administration he was returned to the Senate where he organized, in 1860, the conservative Democrats of the Senate against Stephen A. Douglas, who was in consequence defeated for the nomination for the presidency at the Charleston convention.

Still, Davis was opposed to the secession of the southern states in the winter of 1860–61 and he so expressed himself in a public letter on November 10. When Mississippi seceded he retired to his plantation from which he was called to the presidency of the southern Confederacy (*see* CONFEDERATE STATES), February 9, 1861. He began at once the organization of the navy, army and civil service of the new government. In May he went with the

new capital to Richmond where he spent the next four years in endeavoring to win independence for the South. He was devoted to the cause, but made some very costly blunders and aroused much hostility both by his military and civil appointments. Soon after the collapse of the Confederate Government he was captured in southern Georgia and imprisoned for two years at Fort Monroe. After some years of unsuccessful business experience he settled at Beauvoir, Mississippi, in 1879, where he spent the remainder of his life, except a few days before his death.

See CONFEDERATE STATES OF AMERICA; SLAVERY CONTROVERSY.

References: Jefferson Davis, *Rise and Fall of the Confederate Government* (1881); Mrs. Jefferson Davis, *A Memoir of Jefferson Davis* (1890); William E. Dodd, *Life of Jefferson Davis* (1907). W. E. D.

DAY IN COURT. A phrase denoting the right of every person, both natural and corporate, to have his claims decided upon by a court; also the general principle that every one has the right to be heard. It came into general currency in the debate over the Hepburn railroad rate bill in 1906. O. C. H.

DAYTON, JONATHAN. Jonathan Dayton (1760–1824) was born at Elizabethtown, N. J., October 16, 1760. He entered the American Army in 1778 as paymaster, served in Sullivan's western campaign in 1779, and in 1780 was made a captain in a New Jersey regiment. He was under the command of Lafayette at Yorktown. After the war he became a member of the legislative council of New Jersey, and was a delegate to the Federal Convention of 1787. In 1790 he was speaker of the general assembly. From 1791 to 1799 he was a member of Congress, for the last four years serving as Speaker of the House. In 1799 he was elected to the Senate, and served one term. The discovery, among Burr's papers, of some equivocal letters from Dayton to Wilkinson, led to the charge of complicity in Burr's designs; but although he was arrested and gave bail, he was not brought to trial. This episode, together with the break-up of the Federalist party, led to his retirement from national politics, but he continued to sit for some years in the New Jersey legislative council. With Symmes and others he became interested in western lands, and Dayton, Ohio, was named for him. He died at Elizabethtown, N. J., October 9, 1824. **References:** M. Farrand, *Records of the Federal Convention* (1911); M. P. Follett, *Speaker of the House* (1806). W. MACD.

DAYTON, WILLIAM LEWIS. William L. Dayton (1807–1864) was born at Baskingridge, N. J., February 17, 1807. He graduated from Princeton in 1825, and in 1830 was admitted to the bar and began practice at Trenton. In 1837 he was elected to the New Jersey council (senate), and the next year was made a justice of the superior court, which office he resigned in 1841 and resumed his law practice. In 1842 he was appointed United States Senator to fill a vacancy, and was subsequently elected for the term 1845–51. He was a free-soil Whig, a consistent opponent of the claims of slavery, and a friend and adviser of President Taylor. In 1856 he was nominated for Vice-President by the Republicans on the Frémont ticket, being favored by the eastern members of the convention in opposition to Lincoln, the western candidate. The following year he became attorney-general of New Jersey, retaining that office until 1861, when Lincoln appointed him minister to France. He died in office at Paris, December 1, 1864. See FRANCE, DIPLOMATIC RELATIONS WITH; REPUBLICAN PARTY. **References:** "William L. Dayton" in *Amer. Review*, IX (1849), 68–71. W. MACD.

DEADLOCKS IN LEGISLATION. Deadlocks are inevitable in legislative bodies composed of two houses, particularly when the houses are controlled by different political parties or represent radically different interests. The political party is the commonest means of harmonizing the action in the houses of a bicameral legislature, as the same party usually controls both houses of the state legislatures. The conference committee (*see*), by harmonizing details, prevents the development of temporary disagreements into deadlocks. In our early national history, the most frequent cause of deadlock was the question of slavery. Numerous deadlocks also occurred in Congress during the period from 1875 to 1897 because most of the time the Senate was Republican and the House was Democratic. Deadlocks in the state legislatures due to party difference, although ordinarily unimportant, frequently cause serious difficulties. For example, in Connecticut, in 1891, a dispute over the election of state executive officials caused a deadlock between the Democratic senate and the Republican house which not only prevented the enactment of laws but delayed all appropriations of money for more than a year, until the dispute was decided by the courts. See CONGRESS; STATE, LEGISLATURES.

R. L. A.

DEAF AND DUMB, PUBLIC CARE OF. The duty of the public toward those physically or mentally defective was first recognized in the United States by providing schools for the education of the deaf, which long antedated those for the blind and feeble minded.

A physician in Hartford, Connecticut, whose daughter was deaf, urged the establishment of a school for this class of defectives, and Thomas H. Gallaudet was sent to Europe in 1815 to

study the methods of instruction. He secured much information in Paris and persuaded Laureat Clere, an educated deaf mute, to return with him. They established a school in Hartford, in 1817, and also travelled and lectured on the possibilities of education for the deaf. New York established a school in 1818 and Philadelphia in 1819. By state appropriations, Massachusetts, New Hampshire and Vermont, for a time, furnished education for their deaf mutes by securing admission for them at this Hartford school.

Kentucky established a state school in 1822 and other states followed rapidly. There were, in 1911, 57 state institutions for the deaf, and nearly one hundred under private auspices or as part of the public school systems of cities.

The state institutions are invariably boarding schools and the city schools differ from the public day schools only in having special teachers and following special methods. There are 53 public day schools for the deaf, the largest number (20) being in Wisconsin.

Two methods of instruction, are followed. The earlier sign language and finger alphabet, is still used in many schools in combination with the more recently developed oral method. By the latter method the deaf are taught to use the usual organs of speech and to understand others by watching the lips. Seventy-five schools in the United States use the oral method only.

The following table gives a summary of the benevolent institutions for the deaf and blind in 1904:

Total Number of Institutions	115
Public	66
Private	34
Ecclesiastical	15
Total Number of Inmates, Dec. 31, 1904	14,731
Male	7,923
Female	6,808
Number of Inmates per 100,000 of Population	18
Annual Subsidy to Private and Ecclesiastical Institutions, 1903	884,772
Income from Pay Inmates	100,693
Cost of Maintenance	$3,523,683

See DEFECTIVE CLASSES, PUBLIC CARE OF; DEFECTIVES, PUBLIC INSTITUTIONS FOR; EDUCATION AS A FUNCTION OF GOVERNMENT; EDUCATION OF THE BLIND.

References: A. G. Bell, "Education of the Deaf" in Nat. Educ. Asso., *Proceedings*, 1897, 96; E. G. Dexter, *Hist. of Education in the U. S.* (1906); Paul Monroe, *Cyclopedia of Education* (1911), Art. "Deaf, Education of the;" U. S. Bureau of the Census, *Benevolent Institutions, 1904* (1905), 50.

GEORGE E. FELLOWS.

DEALS IN POLITICS. A phrase applied by the public press as early as 1881 to arrangements entered into by the chiefs of opposite parties (especially in city politics) for the distribution of offices and spoils among the followers of each. O. C. H.

DEANE, SILAS. Silas Deane (1737–1789) was born in Groton, Connecticut, December 24, 1737 and died in Deal, England, August 23, 1789. From 1774 to 1776 he was a delegate from Connecticut to the Continental Congress. Early in the latter year, he was selected by the Committee of Correspondence to go to France in the guise of a merchant to seek to win the favor of that nation and secure supplies of arms, ammunition and clothing for the American Army. His reception by the Comte de Vergennes was favorable and aided by Beaumarchais, a secret agent of the government, Deane was enabled early in 1777 to send off eight vessels containing consignments of clothing and stores. He assisted Benjamin Franklin and Arthur Lee in negotiating the treaties of amity and commerce between France and the United States. From the time of Lee's arrival he sought to detract from the influence of his colleagues and in a communication to Congress declared that Deane was speculating with public funds. In the investigation which followed his recall to America, there was shown to be a careless method of accounting, but no evidence of dishonesty. In 1781 some "intercepted letters to his brother" were published in a New York newspaper in which Deane declared that the struggle for independence was hopeless and counselled returning to the allegiance of Great Britain. Embittered by criticism and loss of influence, Deane returned to Europe, in 1781, and entered the service of Great Britain. See FRANCE, DIPLOMATIC RELATIONS WITH; REVOLUTION, SIGNIFICANCE OF. **References**: Charles Isham, "Dean Papers" in New York Hist. Soc., *Collections* (1887–1889); Francis Wharton, *Dipl. Corresp. of the Am. Revolution* (1889), I, 159–167. J. A. J.

DEATH PENALTY. See CAPITAL PUNISHMENT.

DEATH RATE. See VITAL STATISTICS.

DEBATES IN LEGISLATURES. Strictly speaking the term debate comprehends only what is said on one side or the other of a question upon which a legislative body is to vote. In a wider sense, it embraces everything spoken in the house by members, whether upon the pending question or in respect to any other matter arising in the course of the proceedings. The order and control of debate are regulated partly by formal rules adopted by each legislative assembly for its guidance, and partly by the recognized usages of parliamentary procedure. The rules of all legislative bodies in the United States require members who desire to address the house or to deliver any matter to it, to rise and respectfully address themselves to "Mr. Speaker" and thereby obtain possession of the floor. Upon being recognized by the speaker, a member

may address the house from his seat or from the clerk's desk. If only one member rises to speak, he is entitled to recognition. If two or more rise at the same time, the speaker names the one who is first to speak, the usual rule being to recognize the one who first caught his eye. The rule by which the first member to rise shall be recognized, however, is usually subject to certain exceptions. Thus a member who desires to bring up a matter of paramount importance such as a question of privilege or a question of order, is customarily given a preference over other members who may rise at the same time. Preference is also given to the original mover of a proposition and in both houses of the English Parliament it is a rule of courtesy to give preference to new members who have not yet addressed the house. In the American legislatures, however, there is no custom or rule of procedure by which new members are thus favored.

Upon resuming an adjourned debate, preference is usually given to the member who last rose to speak when the debate was adjourned. The members of a committee charged with reporting a measure to the house are entitled to the same preference as the original mover of a proposition. Under the rules of the national House of Representatives (Rule XIV) such a member is entitled to open and close the debate, and if it extends beyond one day, he is entitled to one hour to close, notwithstanding he may have used an hour in the opening. It is a general rule of parliamentary practice expressly provided for in the rules of the national House and those of the state legislatures, that members in addressing the house shall confine their remarks to the question pending and avoid personalities. This rule is essential to the dispatch of business and the maintenance of the dignity of the house. Another rule is that no member shall speak more than once to the same question without leave of the house, though the rules of the national House of Representatives as well as those of some of the state legislatures make an exception in the case of the mover, proposer or introducer of the matter pending, in which case he shall be permitted to speak in reply, after other members desiring to speak have concluded their remarks. The rules of most legislative bodies impose limitations on the length of time which any member may occupy in debate on any question. In the national House of Representatives, the limit is one hour. In the New York State Assembly it is fifteen minutes, except by consent of two-thirds of the members present.

A common rule of procedure provides that if any member transgresses the rules of the house, the speaker shall call him to order, in which case he shall immediately sit down unless permitted upon the motion of another member to explain, and the house shall, if appealed to, decide the case without debate. It is also generally provided that if a member is called to order for words spoken in debate, the members calling him to order shall indicate the words objected to and they shall be taken down by the clerk and read aloud to the house. Various other rules of less importance governing debates may be found in the rules of procedure of the various legislatures.

See CALENDAR; CLOSURE; CONGRESS; DIVISIONS; EXPULSION; FILIBUSTERING; HOUSE OF REPRESENTATIVES; JOURNALS OF LEGISLATIVE BODIES; ORDER OF BUSINESS; REPORTS OF COMMITTEES; STATE LEGISLATURE.

References: M. P. Follett, *Speaker of the House of Representatives* (1896); Woodrow Wilson, *Congressional Government* (1885), *passim;* A. C. Hinds, *Precedents of the House of Reps.* (1907), *House Manual* (1909).

J. W. GARNER.

DEBS, EUGENE VICTOR. Eugene V. Debs (1855-), Socialist labor leader and agitator, was born in Terre Haute, Indiana, November 5, 1855. He received a common school education, and then became first a locomotive fireman, and later an employee of a wholesale grocery house. From 1879 to 1883 he was city clerk of Terre Haute, and in 1885–86 a member of the Indiana legislature. His official prominence as a labor leader began in 1880, when he became grand secretary and treasurer of the Brotherhood of Locomotive Firemen. In 1893 he was chosen president of the American Railway Union, which office he retained until 1897. In April, 1894, he directed a successful strike on the Great Northern Railway. For his connection with the Pullman strike on western railroads, in the summer of the same year, he was tried for conspiracy and acquitted; but when he disregarded an injunction of a federal circuit court, in July, he was imprisoned for six months for contempt. In 1897 he became chairman of the executive board of the Social Democracy of America, and was active in the coal strike of that year. In 1900, 1904, 1908 and 1912 he was the Socialist candidate for President. See INJUNCTION IN LABOR DISPUTES; STRIKES. References: *In re Debs*, 158 *U. S.* 564; S. M. Reynolds, *Debs, His Life, Writings and Speeches* (1908, new ed., 1910). W. MACD.

DEBT, FLOATING. This term refers to that part of public indebtedness which has not been funded or converted into bonds which have a number of years to run (*see* DEBT, PUBLIC, ADMINISTRATION OF). Generally it is synonymous with the temporary debt, represented by certificates of indebtedness, notes, warrants and accounts payable. Unless the governmental unit has a considerable surplus in its treasury, it is difficult to adjust the budget so that there will not be at times a deficit, making it necessary to borrow temporarily in anticipation of taxes. Or, pending the placing

of a bond issue, it may be desirable to make short loans in order to tide over an immediate emergency.

In federal finance floating debt has occasionally been incurred through the issue of Treasury notes or certificates of indebtedness, including the outstanding legal tender notes. Technically, the outstanding gold and silver certificates form a part of the floating debt, but inasmuch as gold and silver are held for equal amounts in the Treasury, these bookkeeping obligations do not constitute a real indebtedness. Barring the issues of Treasury notes, the Federal Government rarely carries a floating debt. Its financial operations are too enormous and its credit too valuable to be subject to the contingencies of temporary and unexpected fluctuations.

Floating debts are more characteristic of state and municipal finance. Very considerable state and local floating debts are often incurred by simply allowing unpaid bills to accumulate; so that a new administration coming in finds a part of its revenues already mortgaged for this "dead horse" debt. In 1910 the debt of cities in the United States with a population of 30,000 or over, classified according to provisions made for payment, was as follows: Funded or fixed, $2,161,349,765; floating, $13,523,356; special assessment loans, $117,935,073; revenue loans, $107,123,832; outstanding warrants, $24,045,902; private trust liabilities, $14,930,819; total, $2,438,908,747. Revenue loans in the above classification includes all short-term loans in anticipation of taxes, as revenue bonds, revenue loans, tax warrants, tax certificates, temporary loans, etc.

See Appropriations, American System; Budgets, State and Local; Debt, Public, Funding of; Debt, Public, Principles of; Expenditures, State and Local.

References: H. C. Adams, *Public Debts* (1895), 147; C. C. Plehn, *Introduction to Public Finance* (3d ed., 1909), 385.

Davis R. Dewey.

DEBT, IMPRISONMENT FOR. Although at the date of our independence it was a recognized method of procedure in England in the enforcement of the payment of a debt to seize the body of the debtor and hold him in confinement until the debt should be discharged, and such method of procedure was retained in some of the states after the adoption of their constitutions, nevertheless there was such popular dissatisfaction with imprisonment for debt that provisions were incorporated into some of the earlier constitutions and have been inserted into practically all the later ones forbidding such imprisonment. The prohibition is, however, usually construed as forbidding imprisonment for debts arising out of contract and is not applicable to the obligation to pay damages for tort. Such a prohibition does not prevent a state legislature from providing that the fraudulent contracting of a debt or obligation shall be punishable as a crime, nor does it prevent the imposition of punishment by imprisonment for failure to pay a fine or penalty imposed by a court of law.

There is no direct provision in the Federal Constitution on the subject, but the prohibition of involuntary servitude in the Thirteenth Amendment has the effect to render invalid any law which makes it a penal offense for one who has contracted to perform labor for another to abandon such contract. See Involuntary Servitude; Thirteenth Amendment.

E. McC.

DEBT LIMITS IN STATES AND LOCAL GOVERNMENTS. Owing to the great growth of municipal expenditures occasioned by the expansion of urban life during the latter half of the nineteenth century, and the irresponsible, if not corrupt, administration in municipal affairs, it was held necessary in many states to place limits upon the amount of indebtedness which might be incurred by cities and towns. In Europe this is accomplished by the supervision of higher administrative bodies—in England by the Local Government Board; in the United States restriction is secured in some states by constitutional provisions or state laws. Such restrictions limit municipal indebtedness to a certain percentage of the assessed valuation of the property. For example, the state constitution of New York limits its municipal indebtedness to 10 per cent on the real estate valuation; of Pennsylvania, to seven per cent; of Wisconsin and Illinois to five per cent; and of Indiana to two per cent. Exceptions are sometimes allowed for special needs, as in case of a public calamity, or to erect court-houses, or to supply water and sewerage works.

In some states limitation is effected by statutory laws, as in Massachusetts. This leads to the practice of special legislation giving power to borrow outside of the debt limit. The varying rates of limitation found in different states have little significance, owing to the different methods of valuation of property. A low valuation would permit a more generous rate of indebtedness.

See Debt, Public, Administration of; Debt, Public, Principles of; Expenditures, State and Local; and under Constitutions, State.

References: C. F. Gettemy, "Standardizing of Municipal Accounts" in National Municipal League, *Proceedings, 1910,* 235–56; J. A. Fairlie, *Essays in Municipal Administration* (1908), 272–273; F. J. Goodnow, *City Government in the U. S.* (1904), 173–175; L. Chamberlain, *Principles of Bond Investment* (1911), 140–1, 162, 208–212.

Davis R. Dewey.

DEBT, PUBLIC, ADMINISTRATION OF

Classification.—Public debt may be classified according to: (1) provisions made for payment, as funded and floating debts; (2) the time when they are payable, as deferred and demand liabilities; (3) the character of the investments which evidence the debts, as bonds, notes payable, warrants, and accounts payable. The most common distinction is between funded and floating debts. Funded debt is evidenced by some formal instrument and runs for a number of years. Formerly this term was applied more strictly to debts for which sinking fund provisions had been made, but now it is used to include all debts for which more or less permanent and fixed arrangements have been made as to final payment.

Analysis of the Federal Debt.—In its broadest terms the federal debt includes bonds issued against money borrowed, treasury notes, certificates of gold and silver and the national bank-note redemption fund. The funded debt includes the bonds; the floating debt includes the treasury notes, bank redemption fund and the certificates. On June 30, 1912, the total debt of $2,868,373,874 was made up of the following items in three forms of issue:

Forms of Issue	Rate of Interest	Date Authorized	Date of Maturity	Amount
A. Interest-Bearing Debt:				
Consols of 1930	2	1900	1930	$646,250,150
Loan of 1925	4	1875	1925	118,489,900
Loan of 1908–1918	3	1898	1908–18	63,945,460
Panama Canal Loan	2	1902	After 1916	84,631,980
Panama Canal Loan	3	1911	1961	50,000,000
Postal Savings Bonds	2½	1900	1931–32	459,280
Total				$963,776,770
B. Debt Bearing no Interest:				
Matured Loans				1,760,450
Old Demand Notes				53,282
United States Notes				346,681,016
National Bank Redemption Fund				24,710,831
Fractional Currency				6,856,154
Total				$380,061,733
C. Certificates and Notes Issued on Deposits of Coins and Bullion:				
Gold Certificates				1,040,057,369
Silver Certificates				481,549,000
Treasury Notes of 1890				2,929,000
Total				$1,524,535,369

The foregoing method of stating the public debt, while technically accurate as a bookkeeping operation, is misleading, for the Treasury holds gold and silver in trust against the outstanding certificates. In 1912 these holdings amounted to $1,524,535,369, thus reducing the real indebtedness to $1,343,838,505. Even this is not the figure used in some of the current statistical tables; a further subtraction is made of the reserve fund ($150,000,000) and the available eash balance in the Treasury. By these deductions the public debt is officially stated as $1,027,574,697 for the year 1912. A further variation is to be noted. As the legal tender notes have been so long outstanding, and so intricately incorporated into the monetary circulation, this obligation is frequently disregarded and the public debt is held to apply only to the interest-bearing debt. Although the Treasury notes are a true form of indebtedness, the following discussion applies more specifically to the interest-bearing debt (*see* TREASURY NOTES).

Length of Time.—In the making of loans or the issue of bonds, the principal points to be considered are: (1) the length of time for which the loan is to run; (2) the rate of interest; (3) the method of selling the bonds. It has been the general policy of the Federal Government to fix definite dates of maturity at which the bonds will be redeemed. The funding bonds of 1790 were indefinite as to maturity, and so were some of the issues down to 1824, but since that date, with the exeeption of issues of treasury notes, certificates, and a few minor loans, specified periods of time have been designated. In this the United States differs from foreign practice under which loans as a rule have no fixed dates of maturity.

Until reeently a publie debt was regarded as a national evil, to be incurred only on account of emergency of war or financial crisis, and to be paid off in times of peaee as speedily as possible. The great loans of the Civil War were payable in 20 years at the longest. In 1870 the refunding aet provided for payment of a portion "at the pleasure of the government" after 30 years; but the loan made to defray

the expense of the Spanish War in 1898 was redeemable in 20 years. The refunding act of 1900, however, lengthened the term to 30 years. A favorite device in American practice is to reserve to the government the right to redeem at a shorter period, generally specified, if it so desires. For example, the loan of 1862, known as the "five-twenties," under which $515,000,000 was borrowed, gave the Government the right to redeem in five years while pledging redemption in 20 years. So in the case of the "ten-forties" of 1864, the privilege of redemption in 10 years was retained, and payment was pledged in 40 years. While these limitations indicate a praiseworthy desire to restrict indebtedness, they may not always be financially advantageous to the Treasury. Investors favor long terms for their investments, and particularly dislike to be subject to the uncertainty which attaches to an optional privilege of the Treasury to call the loan after a brief term of years. To offset this disadvantage it is consequently necessary to offer a higher rate of interest or to sell the bonds at a lower price.

Rate of Interest.—It has been the general policy to make the rate of interest high enough to sell the bonds at par. During the Civil War, rates, as compared with European loans, were high, 6 per cent on twenty year loans, and running as high as 7.3 per cent on short time loans. The loans authorized by the acts of 1870 and 1875, when the emergency was over, were placed at 5, 4.5 and 4 per cent, the rates varying according to the time of maturity of the several issues, 10, 15, and 30 years respectively.

In 1894 and 1895, when new loans were made in order to purchase gold to protect the Treasury gold reserve, it would have been possible to borrow money at still lower rates; but the opposition of the silver party prevented new legislation, and the administration was forced to resort to the resumption act of 1875 for authority to borrow. This act named 5 per cent as the minimum rate, running for 10 years. Five per cent bonds were consequently issued, and sold at a premium of 116.

In 1898, to meet the needs of the Spanish War, the Treasury was given a freer hand and borrowed at 3 per cent. In the meantime, the artificial value given to Government bonds on account of their exclusive use as a basis for national bank circulation, made it practicable for the Government to borrow on exceptionally favorable terms. As a result the three per cents of 1898 were immediately quoted at a premium. In 1900 the new refunding bonds (consols of 1930) into which all the older 4 per cent bonds were merged bore but two per cent interest. Here again the special demand for bonds by banks was a controlling factor. The banks acquiesced in this low rate by obtaining a reduced rate of taxation on circulation secured by these new securities. The same policy was followed in the Panama Canal loan, authorized in 1902, whereby three per cent bonds were sold at an average price of over 103.

Method of Selling.—Various methods may be used in placing government loans: They may be sold through bankers acting as agents; or *en bloc* to a syndicate of bankers; or sold direct from Government offices by popular subscription. During the first years of the Civil War bonds were sold to chartered banks, but in 1863 the Treasury relied almost wholly upon the private banking firm of Jay Cooke and Co., which received a commission of three-eighths of one per cent on all sales. The method was effective; Cooke carried on an active advertising campaign with hundreds of agents scattered throughout the country.

This plan of selling bonds through agencies outside of the immediate control of the Government excited criticism, as it gave improper advantage to speculators and syndicates. In selling bonds under the resumption act of 1875 to obtain gold for a reserve, it was necessary to negotiate with banks, rather than directly with investors by a popular subscription, since coin did not at that time enter into general circulation. In 1894, bonds were sold to the highest bidders. This, however, did not permanently add to the stock of treasury gold owing to continued withdrawals of gold for the redemption of treasury notes through the operation of the "endless chain." In 1895, therefore, bonds were sold to an organized syndicate, which contracted to deliver gold in part obtained from abroad. Again the charge of favoritism and improper affiliation of the Treasury with bankers was raised.

At the time of the Spanish War of 1898, the Treasury appealed to the patriotism of the people to make the authorized loan popular in every sense of the term. Three per cent bonds were issued in denominations as low as $20 and priority in allotment was given to subscribers for the lowest amounts. In all there were 232,224 subscriptions for $500 or less, and 88,002 bids for larger amounts. The total subscription amounted to $1,400,000,000. Although there was a wide-spread evidence of patriotism, the placing of restrictions of competitive bidding resulted in a probable loss of $2,500,000 to the Treasury. Moreover the holdings originally held by 116,000 subscribers soon passed into the hands of a comparatively few persons. When the refunding operations of 1900 took place national banks were the principal holders of bonds, and consequently the negotiations of the Treasury were largely with these institutions. In the sale of the Panama Canal bonds, beginning in 1906, the Government sold to the highest bidders, with equal opportunity to all citizens. For $30,000,000 offered in 1906, bids aggregating $446,000,000 were received at prices ranging from

par to 125. The average price offered by successful bidders was 104.

Medium of Payment.—Other points to be considered in the administration of public indebtedness are: the elements of security; the place of payment of interest and principal; and the form of the bond from the point of view of negotiability. For security, Government bonds rest simply upon the promise of the Government to pay; there is no pledge of property behind the security. There has been, however, in the past, when the greenback and silver agitation were at their height, controversy as to the kind of money in which the interest and principal of the securities should be paid. The loan act of 1861 made no mention of the particular medium of payment; acts in 1863 and 1864 provided that principal and interest should be payable in coin; and acts in 1864 and 1865 made no coin provision for the principal but did provide that the interest be paid in coin. Even where coin was mentioned, there was dispute as to whether silver was optional with gold. Proceeding, however, on the principal that sound credit was above all other considerations in the operations of public finance, Congress, in 1869, pledged the faith of the United States to redeem its obligations in coin, and executive authority has since interpreted this to mean gold.

Sinking Funds.—Security may be imparted by agreement, when a loan is made, to establish a sinking fund (*see* SINKING FUND), whereby a fund may be gradually accumulated for the final extinction of the debt. This was done, for example, in 1862. The agreement at first, however, owing to the need of continued borrowing, was not observed; and subsequently as debt was extinguished far more rapidly than the sinking-fund provisions demanded, its significance disappeared. To-day the sinking-fund law has fallen into neglect, and its obligations are ignored.

Bonds are issued in two forms, registered and coupon (*see* BONDS, COUPON; BONDS, REGISTERED). As United States bonds are chiefly held for permanent investment, the larger part of the debt is in registered bonds, which are beyond danger of loss or theft. With the exception of the Spanish War bonds of 1898, no bonds are issued in denominations of less than $1,000. Other denominations are for $5,000 and $10,000. Interest on registered bonds is paid by checks drawn by the Treasurer of tbe United States, and coupons are receivable and payable at ten different agencies, including Washington. Of the $890,000,000 bonds reported upon in the accounts of the Register of the Treasury in 1910, $735,000,000 were held by the Treasurer of the United States in trust for national banks; $58,000,000 by associations, corporations and societies; and nearly $98,000,000 by individuals.

Redemption and Refunding.—When a loan becomes due there is a choice of three policies: (1) redemption; (2) continuance of the loan at the pleasure of the Government; (3) refunding into a new loan. The last two methods, of course, involve willingness on the part of the bondholders to enter into negotiation (*see* DEBT, PUBLIC, FUNDING OF). Under the older idea of extinction of indebtedness by a sinking fund, redemption was the natural settlement. When payment is impossible the debt must be continued in some form, and the choice of method with its attendant details constitutes a delicate financial problem. Refunding into new bonds running for definite terms of years is generally the most satisfactory, but if the Treasury anticipates surpluses in the immediate future which can be applied to debt extinction, it may be more advantageous to continue the debt indefinitely at an agreed rate of interest, and redeemable at the pleasure of the government.

State and Local Debts.—In the administration of state local indebtedness, the floating debt plays a larger part than in federal finance. These governmental units cannot employ forced loans through the issue of Treasury notes, and must, therefore, when emergency arises often resort to temporary loans. Their financial administration is not so well organized in forecasting future needs through the preparation of budgets, hence temporary deficits, which must be tided over until legislative authority can be obtained for making a loan. Moreover, states and cities rarely carry surpluses in the form of cash balances as does the Federal Treasury.

Temporary indebtedness of states and cities is incurred under many names. There are scrip, Treasury warrants, assessment loans, revenue bonds, tax loans, judgments, all of which represent indebtedness by the Governings in anticipation of expected revenue during the current year. If these anticipations are not realized, the floating debt gradually increases until it is funded into bonds.

Another special characteristic of state and local indebtedness is the existence of "funds" which represent indebtedness by the government to some specific object, as schools, internal improvements, etc. Such funds may be represented by bonds, or by simply book-keeping obligations on which the state or city promises to pay interest. In the latter case the rate of interest is often high—higher than it would be on current commercial debt obligations.

Some states have also loaned their credit to minor civil divisions. Massachusetts, for example, in addition to its direct debt, has a "contingent" debt incurred for the building of armories, parks, sewerage and water systems in metropolitan districts. The cities benefited refund by sinking fund assessments. In this way extensive improvements can be undertaken which would otherwise be impossible.

As a rule bonds of states and cities are sold after advertisement to the highest bidder, gen-

erally to bankers and bond brokers, who place them with their clients. Most cities are forbidden by statute to sell bonds at a discount; and when bonds are sold to a state or city fund the transactions generally are at par.

Amount of Public Debt.—Prior to 1870 there are no reliable statistics for the total amount of local indebtedness. According to the compilation made by the census office for 1902, the latest at the time of writing (1913) made for all governmental units, the total net national (not including the Treasury notes), state, and local debt, 1870 to 1902, was as follows (in millions):

	1870	1880	1890	1902
National	$2,331	$1,919	$ 852	$ 925
State	353	275	211	235
County	188	124	145	197
Local	328	724	781	1,433
Total	$3,200	$3,043	$1,989	$2,790

Per capita, the amounts were as follows:

	1870	1880	1890	1902
National	$60.46	$38.27	$13.60	$11.77
State	9.15	5.48	3.37	2.99
County	4.87	2.47	2.32	2.50
Local	8.51	14.44	12.47	18.24
Total	$82.99	$60.66	$31.76	$35.50

By geographic divisions the state, county, and local indebtedness in 1902 was distributed as follows:

North Atlantic	$ 947,000,000
South Atlantic	159,000,000
North Central	469,000,000
South Central	174,000,000
Western	116,000,000
Total	$1,865,000,000

Of this grand total New York was responsible for $437,000,000, a per capita of $57.64; and Massachusetts for $210,000,000, a per capita of $72.72.

The average indebtedness of the United States per $100 of estimated national wealth was for 1870, $10.64; in 1880, $6.97; in 1890, $3.06; in 1902, $2.85. The total of interest payments in 1902 was $115,207,000, or $1.46 per capita.

Since 1902 the national debt has slightly increased standing at $1,027,575,000 in 1912. As the population, however, has increased the per capita ratio has declined to $10.77. Local indebtedness, however, is increasing, due to outlays for public undertakings. The national debt of the United States is light as compared with foreign countries, as is seen from the following table for 1911:

	Debt	Per Capita
United Kingdom	$3,567,000,000	$ 78.64
France	6,281,000,000	158.60
German Empire and States	4,896,000,000	75.40
Austria Hungary	3,628,000,000	122.53
Italy	2,604,000,000	75.08
Russia	4,651,000,000	28.93
United States	1,016,000,000	10.88

Comparisons, however, between different countries are liable to be misleading, for in some countries indebtedness is incurred for productive enterprises, as railroads.

See BONDS; FINANCIAL STATISTICS; PUBLIC ACCOUNTS; and under DEBT, PUBLIC.

References: H. C. Adams, *Science of Finance* (1898), 547–564, *Public Debts* (1895), 143–283; U. S. Census Bureau, *Special Report, Wealth, Debt, and Taxation* (1907), 131–612 (statistics and data on state indebtedness in 1902); C. C. Plehn, *Introduction to Public Finance* (3d ed., 1909), 366–314; W. M. Daniels, *Elements of Public Finance* (1899), 302–314; L. Chamberlain, *Principles of Bond Investment* (1911), Part II; for European practice: C. F. Bastable, *Public Finance* (1895), 635–673; E. L. Bogart, "State Debt of Ohio" in *Journal of Political Economy*, April–June, 1911. DAVIS R. DEWEY.

DEBT, PUBLIC, FUNDING OF. Strictly, funding refers to the process of converting a floating debt into a debt running for a longer period, and often with some definite plan of provision for repayment. As currently employed, however, this term is used as synonymous with refunding of public debts (*see* DEBT, PUBLIC). More specifically the term has been applied to the settlement of indebtedness incurred during the Revolutionary War under the Funding Act of 1790. See BONDS; DEBT, PUBLIC, ADMINISTRATION OF; DEBT, PUBLIC, INTEREST ON. References: D. R. Dewey, *Financial Hist. of the U. S.* (3d ed., 1907), 94–96; H. C. Adams, *Public Debts* (1895), 217–235. D. R. D.

DEBT, PUBLIC, INTEREST ON. The charge which has to be met by governments for payment of interest on public indebtedness naturally depends upon the amount of the debt and the rate of interest to be paid.

Total Interest Charge.—The proportion of federal annual interest from 1795 to 1910 has been as follows:

Year	Interest (*Millions*)	Percentage of Total Ordinary Expenditures
1795	$ 2.9	39
1800	3.4	31
1810	3.2	38
1820	5.2	28
1830	1.9	13
1840	.2	1
1850	3.8	9
1860	3.1	6
1861	4.0	7
1862	13.2	3
1863	24.7	3
1864	53.7	6
1865	77.4	6
1866	133.1	26
1867	143.8	42
1868	140.4	40
1869	130.7	41
1870	129.2	44
1880	95.8	37
1890	36.1	12
1900	40.2	8
1910	21.3	3

In 1902 the interest on public debts in the United States was as follows:

National	$ 25,542,000
States, counties and minor civil divisions	89,665,000
Total	$115,207,000

Federal Debt by Rates of Interest.—Owing to the special privileges attached to United States bonds in the taking out of circulation by national banks, the Government is able to sell bonds carrying exceptionally low rates of interest. The changes which have taken place in the federal interest-bearing debt, classified according to rates of interest, is shown as follows (in millions):

Rate Per Cent	1860	1865	1870	1880	1890	1900	1910
2						$329.1	$739.9
3			$59.6	$14.	$14.	128.8	63.9
4		$.1		739.3	602.3	517.9	118.5
4½				250.	109.		
5	$43.5	269.2	221.6	484.9		47.7	
6	21.2	1,281.7	1,765.3	235.8			
7 3-10		830.					

Non-Federal Debt by Rates of Interest, 1902.—In 1902 (the latest date for which a complete classification has been made) the funded debts of states, territories, cities, towns, and other minor civil divisions are classified according to rates, as follows (in millions):

Rate, Per Cent	States and Territories	Cities, Towns, etc.[1]
3	$92.6	$182.7
3½	63.0	365.2
4	17.1	405.9
4½	12.9	60.3
5	17.1	193.2
5½	----	2.2
6	34.1	103.6
7	19.1	33.4
Other reported rates	----	122.6
Rates not reported	----	92.3

[1] Includes assessment loans with the funded debt.

Comparisons of average rates of different states or cities is not an accurate index of credit rating, since the price at which the bonds are sold is not taken into account. Moreover, present indebtedness in some cases was incurred at a time when rates were much higher. In the *Special Report on Statistics of Cities*, made by the Bureau of the Census in 1908, for the first time a presentation was made of the net rate of interest paid by cities with population of 30,000 or over, on bonds issued during the year. For cities with a population of 300,000 or over, the rates range from 3.50 per cent for Detroit to 4.94 per cent for San Francisco; for cities with a population of 100,000 to 300,000, from 3.50 per cent for Indianapolis to 4.87 per cent for Denver; for cities with a population of 50,000 to 100,000, from 3.59 for Somerville, Mass. to 5 per cent for San Antonio, Texas; for cities of 30,000 to 50,000, from 3.62 per cent for Taunton, Mass., to 5.29 for Little Rock, Arkansas.

The annual interest charge for all cities and towns in the United States amounts to nearly 11 per cent of the total ordinary expenditures. In some cities it is considerable larger; in New York, in 1910 it was 15.6 per cent; in Boston, 19.6 per cent.

See DEBT LIMITS IN STATES AND LOCAL GOVERNMENTS; EXPENDITURES, FEDERAL; EXPENDITURES, STATE AND LOCAL.

References: L. Chamberlain, *Principles of Bond Investment* (1911); H. C. Adams, *Public Debts* (1895).

DAVIS R. DEWEY.

DEBT, PUBLIC, PRINCIPLES OF

Public and Private Debt.—Fundamentally, the principles of public indebtedness do not vary greatly from those of private credit. For both there must be a money market from which money can be borrowed, and there must be confidence in the borrower's payment of the interest and principal when due, in order to induce lenders to invest. The state, being a perpetual body, can make perpetual loans; but there are corporations with charters running for hundreds of years which to all intents and purposes have the legal characteristics of perpetuity.

Significant differences do exist, however. A government, being a sovereign body, can disown its liabilities and repudiate its debt. No direct and specific lien exists except in loans made to an inferior or bankrupt nation secured by tax receipts. On the other hand, a government generally borrows from its own citizens and there is thus an intimate mutual relationship established which exercises pressure, if that be needed, to force the government to fulfill its obligations to its own subjects.

Still, as in private loans, confidence is the principal characteristic of government credit: the buyer of government securities does not consider the objects for which the money is to be expended, whether it is to be used in wasteful unproductive expenditures, or in fruitful

productive enterprise. If there be confidence, supported by ability to pay the annual interest charges, loans can run on indefinitely. The government and the individual may each confess inability to pay, the one by repudiation and the other by bankruptcy. If a nation's government once strains its credit, the blot remains, notwithstanding subsequent prosperity; the bankrupt, may reëstablish his credit, and his failure is quickly forgotten. A more important difference lies in the fact that a government can compel its subjects to loan, not only by the sovereign right to take property with or without compensation, but by forcing its creditors to accept promissory notes and certificates of indebtedness in lieu of legal money.

Debts may be incurred for three different reasons: (1) to meet a sudden emergency, as war; (2) to undertake some large outlay, the cost of which it is proper to spread over a series of years; (3) to supplement ordinary revenue when it does not meet ordinary expenditures. The last, if recurrent, is a shiftless policy, universally condemned, and in modern fiscal experience rarely tolerated.

War Debt.—The national debt of the Federal Government has been almost exclusively due to war; the debt of states and local bodies to public improvements. Although the excitement and unsettlement of war do not offer the most opportune time for the consideration of the principles of public indebtedness, Secretary Chase, of the Treasury Department, in financing the Civil War formulated a definite policy. He first decided that taxes should not be increased beyond the requirements of a peace basis, except what was necessary to pay interest and sinking fund requirements on new loans. As for loans, he kept four objects in view: moderate interest; general distribution of the funds; future controllability, and incidental utility, as illustrated in their use by national banks.

Securities during the Civil War were put out in a great variety of forms, designed to attract different classes of investors, or to meet the immediate exigencies of the Treasury. When the war was over, public opinion supported speedy payment, at the longest within the following thirty years. Considering the sacrifices of the generation which had carried on the war, it might fairly have been argued, as in European countries, that the payment of the debt should be deferred and met by a generation not yet born. Such arguments, however, had little weight; the nation turned with eager zeal to extinguish the debt. The funding act of 1870 provided for three classes of bonds, running for 10, 20 and 30 years respectively. The ten year bonds were paid within the assigned period, and Congress supported the Treasury Department in buying up with available surplus funds longer term bonds in the open market before the date of maturity. This desire to redeem the debt was not wholly due, it must be admitted, to well-defined convictions as to debt policy, but was also prompted by unwillingness to reduce the customs taxes and thus endanger the protective system. More recently this influence has been reinforced by the hesitation to change the basis of national bank note circulation. Consequently there has been an acquiescence in the perpetuation of public indebtedness to secure this special service.

Improvement Debt.—State and municipal indebtedness is, for the most part, incurred to support enterprises and undertakings which will yield productive commercial value, or which are presumed to give a general social benefit extending over a considerable period of time. In the first class are debts for the construction of water works, lighting systems, wharves, ferries, railroads, and other internal improvements of a commercial character. In the second class are debts incurred in the construction of public buildings, armories, schoolhouses, libraries, park systems, and sewers. For each of these classes there is ample justification for public indebtedness as far as fiscal theory is involved. With regard to commercial undertakings, there is the possibility of unwise management by government officials, but that is a question of political administration rather than of finance. *A priori*, there is no reason why a state may not make as productive use of borrowed capital as a corporation or individual, and it has an advantage in that its credit is higher than any other agency, and that consequently it can borrow at lower rates.

Debt for Social Betterment.—As to borrowing for undertakings which do not have a direct commercial object, the test is the service which such capital performs when directed to social ends, as compared with what it might render if left to the customary demands of commerce and industry. Hence there can be no comparison in money units. But it is beyond all question that a considerable part of the indebtedness incurred by state and city governments promotes a better social life through increased facilities for education, health and recreation. This conviction commends itself to American legislatures though there are dissentients. Bastable, writing from an English point of view, declares that noneconomic expenditure should primarily be met out of income. "National culture, education, the promotion of social progress are all most desirable; but their promotion is not so pressing an object as to need the use of borrowing by the public process."

In creating such indebtedness care must be taken that the debt be redeemed within the time that the benefit, schoolhouse, library, or park, is serviceable, in order that a subsequent generation shall not be called upon to pay for that in which they have had no benefit. In this respect a debt for war stands on a differ-

ent level than a debt for buildings, streets and sewers. War may mean the preservation of sovereignty, and the benefit of this extends to all time; such debt, therefore, may properly be extended, but debts for commercial undertaking or social benefits should be redeemed. Further caution must be exercised in not borrowing more than taxpayers, without undue sacrifice, can pay. Even social benefits may be obtained at too high a price. Not only must the tax levy include the annual interest charge, but the requirements for the sinking fund, and constant additions to these may make the burden too onerous (*see* DEBT, PUBLIC, INTEREST ON).

In the application of loans to expenditures for social benefit the nature of the object should be carefully scrutinized to determine whether the demand is special or simply one of a constantly recurring series. For example, if a city is obliged to build one new schoolhouse each year in order to provide for its increasing population, and there is reason to believe that this demand will continue indefinitely, it is poor economy to borrow money on long-term bonds for each of the successive buildings. The tax burden would be lighter if such expenditure be considered as current expense to be met by appropriate taxation.

Unfortunately, this principle has not been clearly recognized in local finance. Many cities, for example, pave their streets from the proceeds of sales of bonds, not realizing that this is a recurrent and continuous expense, and that each new generation of taxpayers will have charges of this character for which to provide.

Cities have consequently been improvident as to the future. The growing demands of municipal life; the increasing standard of public comfort; and the inadequacy of existing methods of local taxation have tempted them to incur excessive debts. The error is the more insidious because of the ease of borrowing by cities. Municipal bonds are a favored form of conservative investment. Savings banks in many states are severely limited by law as to the character of their investments, but in every case when such restrictions are laid down, municipal bonds are made acceptable, thus accentuating the demand for these securities.

Economic Effects of Public Debt.—Fiscal theory demands a consideration of the economic effects of borrowing, as compared with taxation. The distinction is sometimes made that borrowing lessens the capital of a country, while taxation diminishes the annual income of taxpayers. The one lessens the production of future wealth; the other, immediate enjoyments, and this latter sacrifice, it is said, is inconsequential as compared with the first. On the other hand, as Bastable points out, public borrowing may excite saving, while oppressive taxation may lessen the accumulation of capital. There is no doubt, also, that expenditures of large sums raised by loans often stimulate certain industries into new life and vigor, and later add generously to the productive force of industrial society. Again the lending of money is voluntary and adjusted to the creditor's circumstances; the payment of taxes is compulsory, and if the levy be excessive may injure the taxpayer's economic independence. Though the debt must ultimately be met by taxation, the taxes will be evenly distributed over a period of years, thus avoiding undue pressure at a single moment.

On the other hand, it is argued that expenditures, even those for war, should be met by taxation rather than by loans in order that voters may the more clearly understand the pecuniary significance of the cost of government. The chief difficulty in attempting to rely upon taxation in case of emergency is the delay in making new taxes operative. Loans can be procured under modern machinery almost instantaneously, and it is probable that the policy of financing a war by loans rather than by taxation will continue as it has in the past.

See DEBT LIMITS IN STATES AND LOCAL GOVERNMENTS; DEBT, PUBLIC, ADMINISTRATION OF; DEBT, PUBLIC, INTEREST ON; PUBLIC ACCOUNTS.

References: C. J. Bullock, *Selected Readings in Public Finance* (1906), 492–532; C. C. Plehn, *Introduction to Public Finance* (3d ed., 1909), 366–382; C. F. Bastable, *Public Finance* (1895), 609–634; H. C. Adams, *Sci. of Finance* (1898), 518–533, *Public Debts* (1895), 240–247; J. A. Fairlie, *Municipal Administration* (1901), ch. xiv; Adam Smith, *Wealth of Nations* (1776), Bk. V, ch. iii; J. S. Mill, *Principles of Political Economy* (1847), Bk. V, ch. vii.

DAVIS R. DEWEY.

DEBT, PUBLIC, REDEMPTION OF. This process refers to the payment or liquidation of indebtedness as distinguished from a refunding operation whereby the debt is continued on a new basis. Prudence demands that a public debt be redeemed, but governments more and more are departing from this principle. A continued series of emergencies may make it difficult. Moreover, redemption implies increased taxation, and if the debt can be carried at a low rate of interest, it is regarded as less burdensome to pay the annual interest charge than to submit to higher taxes for the payment of the principal. Redemption is generally accomplished through the establishment of a sinking fund (*see*) whereby reductions in debt are made gradually, and in an orderly manner. In this case the tax levy includes an annual fixed charge to meet this liability; or a redemption may be undertaken only when a surplus revenue is available. The latter is the usual method followed in federal finance, when revenue fluctuates widely; the former is employed by states and cities where needs and

revenue can be more accurately predicted. See DEBT, PUBLIC, ADMINISTRATION OF. Reference: C. F. Bastable, *Public Finance* (3d ed., 1895), 648–655. D. R. D.

DEBT, PUBLIC, REFUNDING OF. This refers to the process of converting an old debt into a new form. It may be done by selling new securities and using the proceeds to pay off the holders of the old; or it may be carried out more directly by an immediate exchange of securities with current holders. It is generally undertaken either to replace a variety of obligations by a single form, in order to simplify the administration of the debt; or to replace bonds bearing a high rate of interest with bonds at a lower rate; or to continue indebtedness which is approaching maturity. Often it is necessary to grant some special privilege in order to induce the holders to make the exchange, such as issuing the new bond for a longer term than the old issue had to run, a factor highly prized by investors. The two great refunding acts of the Federal Treasury were those of 1870 and 1900. The object of the former was to convert the various forms of indebtedness incurred during the Civil War into a few simple types carrying a lower rate of interest. A mistake was made, however, in extending some of the bonds over too long a term, thus making it difficult for the Government to retire indebtedness when it enjoyed a surplus. The act of 1900 refunded the debt at a lower rate of interest, the exchange being induced by making the new bonds run for thirty years; and, when used by national banks for taking out circulation, by reducing the tax on circulation. See DEBT, PUBLIC, REDEMPTION OF. References: D. R. Dewey, *Financial Hist. of the U. S.* (1903), 352–354; C. F. Bastable, *Public Finance* (1895), 648–659; H. C. Adams, *Public Debts* (1895), 217–235. D. R. D.

DEBT, PUBLIC, REPUDIATION OF. The National Government has maintained its credit on a high plane. On a few occasions the Treasury has been obliged to suspend specie payments, notably after 1861, when the redemption of the floating debt represented by treasury notes was deferred. But Congress never lost sight of its duty, and met the responsibility by resumption (*see*) in 1879. In spite of the opposition of the Greenback party (*see*), Congress provided that the bonded indebtedness should be paid, both interest and principal, in money of the highest value.

States and cities have not been so resolute in their experience. There have been two eras of state repudiation. The first came after the panic of 1837; many of the states had invested state funds heavily in internal improvements and in subscriptions to state banks. Just as the Federal Government paid off the last remnant of the national debt, the debts of the states began to run up so that in three years they increased from \$46,000,000 to \$175,000,000. Seven states—Pennsylvania, Maryland, Indiana, Illinois, Michigan, Florida, and Mississippi, defaulted for a time. Of these, Mississippi and Florida eventually repudiated indebtedness which had been incurred through imprudent lending of credits to banking institutions.

The second period of repudiation was after the Civil War from 1870 to 1884. Nine southern states—Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, Arkansas and Tenessee repudiated state indebtedness. The debt of these states had increased from \$88,000,000 in 1860 to \$170,000,000 in 1870, in part, because of the extravagant and corrupt government of the reconstruction (*see*) period; in particular, incurred for railroads and other public improvements. One of the northern states, Minnesota, in 1860 repudiated a block of bonds in aid of a railroad on the ground that the consideration promised by the company had not been carried out. Later in 1881, by agreement with holders, the repudiated bonds were refunded at 50 cents on the dollar, with accrued interest. Eleven states thus have at one time or another repudiated—Florida and Mississippi twice.

The position of a creditor of a state is extremely unsatisfactory. Originally, under the Constitution, the federal courts were given power in controversies in which a state was a party, but subsequently this right was taken away by the Eleventh Amendment; a suitor against a state is, therefore, without remedy, unless states by their own law provide access to the courts. This a few of the states have done. Efforts were made to compel receipt of coupons of certain Virginia bonds which had been made receivable for taxes; but the Supreme Court held (Poindexter *vs.* Greenhow, 114 *U. S.* 270) that a suit against a state official was substantially a suit against a state official was repudiated bonds of the state of North Carolina were presented to the state of Minnesota and suit was brought, the Supreme Court held that the suit did lie but it was never pressed. There seems therefore to be no practical legal remedy if a state of the Union refuses to pay its debts or carry out contracts of the payment of interest or principal.

See CONTRACT, IMPAIRMENT OF; DEBT, PUBLIC, ADMINISTRATION OF; DEBT, PUBLIC, PRINCIPLES OF; DEBT, LIMITS IN STATE AND LOCAL GOVERNMENT.

References: W. A. Scott, *Repudiation of State Debts* (1893), standard bibliography, 265–274; L. Chamberlain, *Principles of Bond Investment* (1911), 130–137; D. R. Dewey, *Financial Hist. of the U. S.* (1903), 243–246.

DAVIS R. DEWEY.

DECENTRALIZATION. See CENTRALIZATION.

DECLARATION OF INDEPENDENCE

THE DECLARATION OF INDEPENDENCE

IN CONGRESS, JULY 4, 1776.

THE UNAMIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.[1]

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established, should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.—Such has been the patient sufferance of these colonies; and such is now the necessity which constains them to alter their former system of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State remaining, in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

He has kept among us in times of peace, standing armies, without the consent of our legislature.

He has affected to render the military independent of, and superior to, the civil power.

He has combined, with others, to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offenses:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by authority of the good people of these colonies, solemnly publish and declare: that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown,

[1] The capitals, punctuation, paragraphing are modern, and not like the original.

and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK.

The foregoing declaration was, by order of Congress, engrossed and signed by the following members:

New Hampshire
Josiah Bartlett,
Wm. Whipple,
Matthew Thornton.

Massachusetts Bay
Saml. Adams,
John Adams,
Robt. Treat Paine
Elbridge Gerry.

Rhode Island
Step. Hopkins,
William Ellery.

Connecticut
Roger Sherman,
Sam'el Huntington,
Wm. Williams,
Oliver Wolcott.

New York
Wm. Floyd,
Phil. Livingston,
Frans. Lewis,
Lewis Morris.

New Jersey
Richd. Stockton,
Jno. Witherspoon,
Fras. Hopkinson,
John Hart,
Abra. Clark.

Pennsylvania
Robt. Morris,
Benjamin Rush,
Benja. Franklin,
John Morton,
Geo. Clymer,
Jas. Smith,
Geo. Taylor,
James Wilson,
Geo. Ross.

Delaware
Caesar Rodney,
Geo. Read,
Tho. M'Kean.

Maryland
Samuel Chase,
Wm. Paca,
Thos. Stone,
Charles Carroll of Carrollton.

Virginia
George Wythe,
Richard Henry Lee,
Th. Jefferson,
Benja. Harrison,
Thos. Nelson, Jr.,
Francis Lightfoot Lee,
Carter Braxton.

North Carolina
Wm. Hooper,
Joseph Hewes,
John Penn.

South Carolina
Edward Rutledge,
Thos. Heyward, Junr.,
Thomas Lynch, Junr.,
Arthur Middleton.

Georgia
Button Gwinnett,
Lyman Hall,
Geo. Walton.

Beginnings.—There had been conflicts at Lexington and Concord, and the battle of Bunker Hill had occurred, before any considerable number of Americans thought seriously of separation from the British Empire. The first Continental Congress contained a number of men who later became Loyalists (*see*). Such men were in attendance even at the early sessions of the second Continental Congress.

In 1775 all the colonies were being governed by temporary assemblies, committees of safety, (*see*) and conventions, because none cared to cut the bonds and set up new governments. This scene of confusion caused much anxiety to serious-minded men, and in June, 1775, in answer to a request from the Massachusetts convention, the Continental Congress prescribed a temporary form of government which a few months later New Hampshire and Virginia were likewise advised to establish. This was coming perilously near independence, but still a strong party in Congress prevented further advance. Slowly, however, the hesitating members were being won over by the course of events. A petition to the King, sent by Congress on the urgent appeal of John Dickinson, leader of the Conservatives, was rejected with contumely. After the news of Bunker's Hill the King issued a proclamation urging his loyal subjects to aid in quelling "rebellion," and, though rebellion actually existed, the colonists strongly resented the use of the term. Then came the burning of Falmouth by the British, and soon Parliament closed American ports and ordered the seizure of all ships trading with America. In American eyes these were unpardonable offenses. Lord Dunmore's conduct in Virginia, and the burning of Norfolk still further alienated the colonists. Then came Thomas Paine's famous pamphlet, *Common Sense*, with its attack upon the sacred person of the King, ridiculing his divine right, and calling him a "sceptred savage," a "royal brute." The arguments which went with these epithets won over many who were still holding back because of a pious respect for "divine right." He attacked the British constitution also, arguing that British liberty was due not to constitutional forms but to the character of the people. This prevailed upon many who were fearful of losing what guarantees of political liberty British people had already won. Finally, he argued against the imperialists who were unwilling to lose the prestige enjoyed by British subjects as members of so vast and powerful an empire. The pamphlet containing these arguments sold by the hundred thousand, and many men were won to the idea of independence. Meanwhile, the radicals in Congress were carrying measure after measure, so many steps toward independence. March 14, 1776, Congress advised the thirteen colonies to disarm the loyalists. The next step was a resolution urging the states to license American privateers to prey on British commerce. A little later the ports of America were flung open to the world. Then temporary governments were authorized. On May 10, Congress passed a famous resolution, which Duane denounced as "a piece of mechanism to work out independence." All the colonies were urged to adopt new governments since "no government sufficient to the exigencies of their affairs" existed. Five days later, Congress declared it unreasonable for the people to take oaths to support a British government, and that every species of British authority ought to be totally suppressed. Only a formal declaration now remained to make indubitable the purpose of the Congress and the thirteen colonies.

The Vote for Independence.—The middle provinces, Pennsylvania, Maryland, Delaware New Jersey and New York, had been slower than New England or the South to take up the idea of independence. Upon them the radicals in Congress worked through various devices to place the power in the hands of those who favored independence. This they did through letters and resolutions intended to fire the

patriot mind, by personal visits of radical members to lagging provincial assemblies, and even by the use of the continental army to bolster weak revolutionary committees, fearful of being overwhelmed by local loyal majorities. All of this ultimately had its effect, but when, upon instruction from the Virginia assembly, Richard Henry Lee, rose in Congress (June 7) to move "That these united colonies are, and of a right ought to be, free and independent states," only three colonies had clearly instructed their delegates to vote for independence. North Carolina (April 2) and Virginia (May 15) had led the way, and the Massachusetts legislature (May 10, 1776), having urged the towns of that colony to instruct their representative on the subject, found, early in June, that a majority of them were favorable to independence. After Lee's resolution was opposed in Congress by those who wished to await instructions from the states, the eager independence faction agreed to wait three weeks, and meanwhile the campaign to win over the hesitating states was conducted with redoubled vigor. Between June 7 and July 1 when the matter was again taken up in Congress, Connecticut, New Hampshire, New Jersey and Maryland, with varying motives, instructed their delegates to vote for the resolution of independence. Pennsylvania too fell in line in a different manner. On June 8 its assembly removed the restrictions formerly placed upon Pennsylvania's delegates as to independence, though with the understanding that the delegates would still oppose. Later, however, on June 24, a committee of a convention that ignored the assembly instructed the Pennsylvania delegates to vote for independence. Georgia, South Carolina, Rhode Island and Delaware delegates were not clearly instructed to favor Lee's motion, when, on July 1 Congress took it again into consideration, but the delegates were sure enough of the sympathy of their provinces to venture a favorable vote. The New York members alone did not feel safe in assuming that their constituents would approve of a vote favoring independence. After a debate in which John Adams was the most able champion of independence, and wherein John Dickinson pleaded for delay until the united colonies should have success in the field and agree upon terms of confederation, the New York members were excused from voting. Nine states now agreed to the resolution, Delaware's vote being lost because of a tie, while South Carolina and Pennsylvania opposed. The final question was put off for a day, in the hope of final unanimity. Caesar Rodney was sent for, meanwhile, and on July 2 his vote placed Delaware on the affirmative side. Dickinson and Robert Morris staid away and Pennsylvania now joined the majority. The South Carolina delegates decided to approve, in the faith that their province would come to their support. The New York delegates would not take their risk, and it was not until June 9 that their assembly gave them favorable instructions.

The Declaration.—The question was, however, decided by the vote of July 2 and then followed two days of wrangling over the form in which a declaration of this resolve was to go forth to the world. A committee of which Jefferson was chairman, already had a draft prepared. On the evening of July 4, the revised declaration was adopted by twelve states. A day later, copies signed only by the president and the secretary of Congress were sent to several state assemblies. Congress did not order it engrossed until July 19, and it was not signed by the members until August 2. The names of the signers were not made public for more than six months. Among certain classes of the American people, the Declaration was received with a wild, unreasoning joy, but others, even good Whigs, "trembled at the thought of separation from Great Britain."

The Declaration has had many critics, but perhaps the chief criticisms concern its originality and the truth of its political philosophy. Its very purpose dictated that it should not be original. It must express the thoughts familiar to many, or it would not be accepted by the many. It did contain the ideas which had been familiar doctrines since the time of the Puritan Revolution. The ideas of natural right, the social compact (*see*), and popular sovereignty were to be found in the writings of Locke. If there was indefensible political philosophy, at least it was the prevailing thought of the age. If we regard the end to be attained by the Declaration, the paper must take very high rank among the political manifestoes of all times, both in its literary excellence and in its appealing philosophy.

See Bills of Rights; Constitution of the United States, Preamble to; Jefferson, Thomas; Liberty, Civil; Liberty, Legal Significance of; Minorities, Rights of; Political Theories of Early American Publicists; Political Theories of English Publicists; Revolution, American, Causes of; Social Compact Theory; Sovereignty of the People.

References: Original engrossed text preserved in the Department of State; several facsimiles, as in W. H. Michael, *Declaration of Independence* (1904), 14; exact reprint in Mabel Hill, *Liberty Documents* (1903), ch. xiv; E. McClain, *Constitutional Law of the U. S.* (2d. ed., 1910), 385–388; H. Friedenwald, *Declaration of Independence* (1904), 263–279; first broadside edition facsimile in W. H. Michael, *Declaration of Independence* (1904); bibliography in C. H. Van Tyne, *The Am. Revolution* (1905), 340–342; J. Winsor, *Handbook of the Am. Revolution* (1789), 103–107; Secondary accounts in H. Friedenwald, *The Declaration of Independence* (1901); M. Chamberlain, *J. Adams* (1898); C. H. Van

Tyne, *Am. Revolution* (1905), 50–87; M. C. Tyler, *Literary Hist. of the Am. Revolution* (1897), I. 506–507; J. T. Morse, *Thomas Jefferson* (rev. ed., 1899); J. H. Hazelton, *Declaration of Ind.* (1906); Sources in P. Force, *Am. Archives* (1837–1853); *Journals of the Continental Congress* (W. C. Ford, Ed., 1904), III–VII; D. R. Goodloe, *Birth of the Republic* (1889). C. H. Van Tyne.

DECLARATION OF THE INTENTION TO BE NATURALIZED. This is the official term for the oath of an alien, being at least eighteen years of age, taken not later than two years prior to his admission to citizenship, specifying his *bona fide* intention of becoming a citizen of the United States, and renouncing all allegiance and fidelity to any foreign power. He must swear that he is neither a polygamist nor an anarchist; must state, among other things, his age, occupation, place of birth, last foreign residence, date of arrival, name of vessel on which he came and present residence.

The declaration shall be made before the clerk (or his authorized deputy) of United States district courts, United States district courts of Hawaii and Alaska, the supreme court of the District of Columbia, or courts of record in any state or territory having jurisdiction in cases in which the amount in controversy is unlimited.

A duplicate of the "declaration" is filed with the Bureau of Naturalization of the Department of Labor, which files a certificate, including the declaration of intention, with the clerk of the court to whom the alien applies for naturalization.

See Alien; Allegiance; Citizenship, Bureau of; Citizenship in the United States.

References: U. S. *Statutes*, XXXIV, 596–607; *Am. Year Book, 1911*, 43.

O. C. Hormell.

DECLARATION OF PARIS. The principle of "free ships free goods" (*see*) has appeared in various treaties since early in the 18th century. A more liberal attitude in the treatment of neutral property and of enemy's property at sea had also grown up during the 19th century. Excesses of privateering developed an unfavorable attitude toward that method of carrying on war, as was shown in the Crimean War by the French and British war declarations in 1854. The British declaration, to which the French corresponds, provides that Great Britain is willing "for the present to waive a part of the belligerent rights appertaining to her by the law of nations;" among them, "the right of seizing enemy's property laden on board a neutral vessel unless it be contraband of war." Neutral property on enemy ships is declared not contraband, and it asserted that "it is not the intention to resort to privateering" *British Foreign State Papers* (1855–56, XLVI, 36). The rights thus waived became the subject of negotiation at the close of the war, with the result that the plenipotentiaries signed the Declaration of Paris April 16, 1856, which sets forth:

> Considering:
> That maritime law in time of war has long been the subject of deplorable disputes;
> That the uncertainty of the law and of the duties in such a matter give rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts; that it is consequently advantageous to establish a uniform doctrine on so important a point;
> That the Plenipotentiaries assembled in Congress at Paris cannot better respond to the intentions by which their Governments are animated, than by seeking to introduce into international relations fixed principles, in this respect.
> The above-mentioned Plenipotentiaries, being duly authorized, resolved to concert among themselves as to the means of attaining this object; and having come to an agreement, have adopted the following solemn declaration:
> 1. Privateering is and remains abolished:
> 2. The neutral flag covers enemy's goods, with the exception of contraband of war;
> 3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag;
> 4. Blockades, in order to be binding, must be effective—that is to say, maintained by a force really sufficient to prevent access to the coast of the enemy.

This Declaration gained the adherence of all important states except Mexico and Spain which objected to the abolition of privateering and the United States, which wished to exempt all private property from seizure. Spain and the United States both respected the Declaration in the war of 1898.

See Maritime War; Neutrality, Principles of; Privateers.

References: *Sen. Exec. Docs.*, 34 Cong., 1 Sess., No. 104 (1856); T. G. Bowles, *Maritime Warfare* (1878); F. R. Stark, *Abolition of Privateering* (1897); J. B. Moore, *Digest of Int. Law* (1906), I, 195, 561.

George G. Wilson.

DECLARATION OF RIGHTS. See Bills of Rights.

DECLARATION OF WAR. Prior to the ratification of the Hague Convention in regard to the Opening of Hostilities, (*see* Hague Conferences) practice showed no uniformity, but a growing tendency to open hostilities without declaration. The United States declared on April 25, 1898, that war existed and had existed with Spain since April 21. The Hague Convention, to which the United States is a party, provides for declaration prior to hostilities as follows:

> Article I. The contracting powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.
> Article II. The existence of a state of war must be notified to the neutral powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph. Neutral powers, nevertheless, cannot rely on the absence of notification, if it is clearly established that they were in fact aware of the existence of a state of war.

See BELLIGERENCY; WAR, INTERNATIONAL RELATIONS OF; WAR, POWER, CONSTITUTIONAL. Reference: G. G. Wilson, *Int. Law* (1910), 248, 249. GEORGE G. WILSON.

DECLARATORY STATUTES. Statutes passed to remove doubts, or to settle conflicting judicial decisions, as to what the common law is upon given points. A statute designed to explain or remove an ambiguity in a previous statute is more properly an expository statute. H. M. B.

DECORATION DAY. A day set apart as a legal holiday in most states both North and South for paying tribute to the memory of the soldiers and sailors who fell in the Civil War. May 30 is observed in the North and a day in April in several southern states. An order issued by the Commander-in-Chief of the Grand Army of the Republic, John A. Logan, May 5, 1868, designating May 30 was the first official recognition in the North of the custom. New Jersey was the first state to declare May 30 Memorial Day; New York the first to make it a legal holiday. O. C. H.

DEEP WATERWAY TO THE GULF. See LAKES-TO-THE-GULF WATERWAY.

DE FACTO GOVERNMENT. *De facto* government may be of several kinds. A *de facto* government exists: (1) when a "usurping government expels the regular authorities from their customary seats and functions, and establishes itself in their place, and so becomes the actual government of a country;" (2) when by paramount force a government maintains itself by military power in spite of the regular authorities and compels obedience of private citizens. Acts done under the authority of the *de facto* government are valid if the *de facto* government subsequently becomes the *de jure* government; and even if the *de facto* does not become the *de jure* government, certain acts are valid; *e. g.*, if a private citizen pays his regular tax for administrative purposes to the *de facto* authorities it may not be collected a second time. See CONFEDERATE STATES OF AMERICA; DE JURE GOVERNMENT; RECOGNITION OF NEW STATES. References: Thorington *vs.* Smith, 8 *Wallace* 1; Williams *vs.* Bruffy, 96 *U. S. Sup. Ct.* 176. G. G. W.

DEFECTIVE CLASSES, PUBLIC CARE OF. The defective classes include insane, feeble minded, epileptic, deaf, blind, crippled and incurable people. For more than a century special public institutions have been provided for the care of a portion of the insane; and public schools for the instruction of deaf and blind children have existed for nearly the same length of time. For many years the only public provision made for the other classes enumerated above, together with a large portion of the insane, was in the public almshouses (*see*). Gradually it has been recognized that all of these classes of defectives are properly public charges, and ought to be cared for by the commonwealth in special institutions.

The responsibility for the care of the insane has been divided between state governments and county governments. (In a few cases city asylums for the insane have been maintained.) It has been found, uniformly, that the state care of the insane is much more efficient than county care. The only important exception in the United States has been in the states of Wisconsin and Pennsylvania where excellent county asylums for the insane are maintained. Universal state care for the insane is now widely advocated: it has been completely accomplished in New York, Minnesota and California, and partially so in several other states. In Wisconsin and Pennsylvania, however, it is maintained, that in a small county institution, properly organized and faithfully administered, patients can be kept, near their friends, much more economically and happily than in great state institutions.

Public care of the feeble minded began in the United States about sixty years ago and public institutions for the feeble minded are now maintained in 32 states of the Union, with accommodations for about 30,000 persons. It is estimated (1913) that there are more than 200,000 feeble minded persons in the United States, so that the public provision thus far reaches only about one-seventh of this class. Authorities on this subject advocate public care for the feeble minded, both for their protection and happiness and to protect the community from the multiplication of their kind.

Special colonies for the care of epileptics have been established in Ohio, New York, Massachusetts, New Jersey, Pennsylvania, Texas, Kansas, Indiana, Virginia, and Connecticut, and auxiliary provisions for them have been made in Wisconsin and Michigan. The total number thus provided for in these 12 states probably does not exceed 5,000 or 6,000, out of a total in the United States, of not less than 50,000. Their need is very great and they are a serious menace to the community.

The deaf and the blind are not regarded as defectives, but as special pupils. Instead of asylums for the deaf and blind schools are now provided. In several states special compulsory laws have been passed to insure the attendance of such children.

See ALIENS, CONSTITUTIONAL STATUS OF; CHARITIES, ASSOCIATED; CHARITIES, PUBLIC AGENCIES FOR; CHILDREN, DEPENDENT, PUBLIC CARE OF; CITIZENSHIP IN THE UNITED STATES; DEAF AND DUMB, PUBLIC CARE OF; DEFECTIVES, PUBLIC INSTITUTIONS FOR; DOMICILE AND RESIDENCE; EDUCATION OF THE BLIND; EPILEPTICS, PUBLIC CARE OF; INCURABLES, PUBLIC CARE

OF; INEBRIATE ASYLUMS; INSANE, PUBLIC CARE OF; LIBERTY, LEGAL SIGNIFICANCE OF; OLD AGE PENSIONS AND INSURANCE; POVERTY AND POOR RELIEF.

References: A. G. Warner, *American Charities* (1908); W. W. Ireland, *Mental Affections of Children* (1900); M. W. Barr, *Mental Defectives* (1904); *Am. Year Book, 1910, 1911*, and year by year; U. S. Bureau of the Census, *Insane and Feeble-Minded in Hospitals and Institutions* (1904), *Benevolent Institutions* (1904); Nat. Conf. of Char. and Correction, *Proceedings* (1874 to date); State Conferences of Charities, *Proceedings* (obtainable from state secretaries).

HASTINGS H. HART.

DEFECTIVES, PUBLIC INSTITUTIONS FOR. The term "defectives" has come to be applied to individuals who are below the normal grade mentally or physically insane, feeble-minded, epileptic, deaf, blind, crippled and deformed persons. The institutional care of these classes includes places of temporary detention, temporary observation hospitals, hospitals for medical and surgical treatment, convalescent homes and asylums for the permanent care of those who are considered to be beyond the need or the reach of hospital treatment.

The Insane.—In most states of the Union the temporary detention of insane persons is provided in county jails; the sheriff is thus made responsible for the safe keeping of the patient pending the determination of his sanity or insanity; and the practice fits in with the popular notion that insane persons are dangerous and need strict restraint. An insane person is a sick person, and nine out of ten of the insane are as little dangerous as any other sick patients. They should receive the care to which sick people are entitled. Detention in jail is a cruelty to innocent people, and often aggravates the disease.

It is important, also, that persons whose condition is doubtful should be under competent medical observation though in some states where hospital provision is inadequate, chronic insane persons have been kept for long periods in jails, receiving only such care as can be given by other fellow prisoners. In recent years detention hospitals have been provided in many of the larger cities, as in New York and Chicago, where persons supposed to be insane can be under medical observation and receive hospital care pending their legal examination. Some detention hospitals are doing admirable work in curing patients who are temporarily insane without commitment to a state institution.

Public hospitals for the insane in the United States are almost invariably maintained by the commonwealth. County and city hospitals for the insane in New York, Ohio, Illinois and Wisconsin (Milwaukee County only) have been taken over by the state. A great advance was made in the care of the insane between 1880 and 1890 by discarding crib beds, restraint apparatus and cellular confinement, and substituting personal care of nurses, out-door exercise and open wards; also by the establishment of training schools for nurses. A still greater advance was made between 1900 and 1910 by advancing the medical standards of hospitals for the insane, increasing the amount of medical work and relieving the assistant physicians from a great mass of detailed recording, which can be done better by inexpensive clerks. This reform has been accompanied by a great advance in pathological work and an intelligent study of the causes of insanity. Out of it has come a movement for the prevention of insanity, represented by the National Committee for Mental Hygiene.

Cripples are cared for in orthopedic hospitals, convalescent homes and asylums for cripples and in homes for incurables. State orthopedic hospitals are maintained by Maine, Massachusetts, Minnesota and Kansas. Convalescent and custodial care are provided in connection with the state hospitals of Massachusetts and Minnesota. The Illinois legislature passed a bill appropriating money for a state hospital for cripples in 1911.

Special public schools for cripples are maintained in several cities of the United States.

See CHARITIES, ASSOCIATED; CHARITIES, PUBLIC AGENCIES FOR; CHILDREN, DEPENDENT, PUBLIC CARE OF; DEAF AND DUMB, PUBLIC CARE OF; DOMICILE AND RESIDENCE; EDUCATION OF THE BLIND; EPILEPTICS, PUBLIC CARE OF; INCURABLES, PUBLIC CARE OF; INEBRIATE ASYLUMS; INSANE, PUBLIC CARE OF; LIBERTY, LEGAL SIGNIFICANCE OF; OLD AGE PENSIONS AND INSURANCE; POVERTY AND POOR RELIEF.

References: Reports of Hospitals for the insane and institutions for the feeble minded; U. S. Bureau of the Census, *Insane and Feeble-Minded in Hospitals and Institutions* (1904); Craig Colony for Epileptics, Sonyea, N. Y., *Reports;* Ohio State Hospital for Epileptics, Gallipolis, O., *Reports;* Minnesota State Board of Control, *Biennial Reports* (1906 to date).

HASTINGS H. HART.

DEFICIENCY BILL. The deficiency bill is one of the fourteen appropriation bills annually acted upon in Congress, which brings together in one bill a great variety of appropriations required in order to supplement inadequate grants in acts of previous sessions. Owing to the lack of executive responsibility in framing appropriation bills under the American system, many errors or miscalculations as to needs are made by congressional committees. The result is that the deficiency bill often covers a large sum, as, for example, $23,000,000 in 1911, out of total appropriations of $664,000,000. In English finance, such grants are known as supplemental credits. See APPRO-

PRIATIONS, AMERICAN SYSTEM OF. Reference: H. C. Adams, *Science of Finance* (1898), 183-185, 190. D. R. D.

DEGREES, ACADEMIC. An academic degree is a title, evidenced by a certificate or diploma, conferred by a college, university, or professional school, upon a person because of his proficiency in any branch of knowledge. The degree may be either earned or honorary. Earned degrees are conferred upon students who satisfactorily complete a prescribed course of study; who satisfy the residence requirements of the institution granting the degree; who complete the thesis or dissertation that may be required; and who pass the examinations set for the degree. Honorary degrees are conferred upon individuals selected, without examination or other requirement, by reason of their eminence in some line of endeavor.

The degree usually given to students upon completion of the non-professional four-year college course is Bachelor of Arts (B. A. or A. B.) and Bachelor of Science (B. S. or S. B.). The A. B. does not now indicate, as it once did, that the recipients have completed a certain amount of Greek, Latin and mathematics. The B. S. is now widely conferred as a result of the introduction of scientific courses in the curriculum. The degrees Master of Science (M. S.) and Master of Arts (M. A. or A. M.) are usually conferred on holders of bachelor's degrees who have completed an additional year of study, although the master's degrees are also often honorary. The degree of Doctor of Philosophy (Ph. D.) is usually conferred only upon those candidates who have completed at least three years of graduate work and have submitted a thesis showing ability to do original work. It is no longer given as an honorary degree by any institution of rank.

The usual degrees conferred by the professional schools of law, medicine, theology and engineering, are, respectively, Bachelor of Laws (LL. B.), Doctor of Medicine (M. D.) Bachelor of Divinity (B. D.) Civil Engineer (C. E.), Electrical Engineer (E. E.), and Mechanical Engineer (M. E.).

The usual honorary degrees are, besides A. M. and S. M., Doctor of Science (Sc. D.), Doctor of Letters (Litt. D.), Doctor of Laws (LL. D.), and Doctor of Divinity (D. D.).

Academic degrees are not and cannot be adequately protected by legal enactment: some small and new institutions and some unauthorized agencies, have granted degrees for insufficient or no reason. Consequently, a committee of the National Association of State Universities reported November 1908, "upon standards for the recognition of American universities and upon standards for the recognition of the A. B. degree and higher degrees." The Carnegie Foundation by restricting its pension fund to colleges and universities enforcing certain requirements for admission and study is another force tending to standardize academic degrees in the United States. The federal Bureau of Education issued in 1911, *A Classification of Universities and Colleges with Reference to Bachelor's Degrees*, and is endeavoring to eliminate irresponsible agencies which grant degrees for revenue only.

See EDUCATION AS A FUNCTION OF GOVERNMENT; EDUCATION, TECHNICAL; EDUCATIONAL STATISTICS; SCHOOLS, PUBLIC PROFESSIONAL; STATE UNIVERSITIES; UNIVERSITIES AND COLLEGES, ENDOWED AND PRIVATE.

References: Paul Monroe, Ed., *Cyclopedia of Education* (1911, *et seq.*), Art. "Degrees"; United States Commissioner of Education *Reports*, for degrees granted yearly; College and University catalogues for the conditions attaching to the granting of degrees.

WILLIAM FREDERICK SLOCUM.

DE JURE GOVERNMENT. *De jure* government is that recognized by the department entrusted with the authority to recognize the existence of a state. The United States Supreme Court has said:

> Who is the sovereign *de jure* or *de facto*, of a territory is not a judicial, but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as other officers, citizens and subjects of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances. It is equally well settled in England.

See DE FACTO GOVERNMENT; RECOGNITION OF NEW STATES; STATE, THEORY OF. Reference: Jones *vs.* U. S. (137 *U. S.* 202). G. G. W.

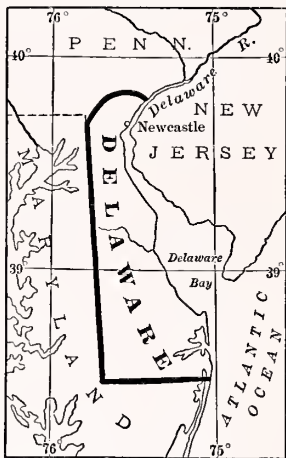
DELAWARE. Early History.—The land now called Delaware was first permanently settled in 1638 by the Swedes, who, spreading along the river, were soon in conflict with the Dutch. In 1655, New Sweden became a part of New Netherland by a bloodless conquest. In 1664 it passed to the English and remained under the Duke of York's laws until it came into the hands of William Penn in 1682. The boundary dispute between the heirs of Baltimore and Penn occasioned the survey which ran the Mason and Dixon Line (*see*).

Political separation from Pennsylvania was the result of jealousy of the prosperous Quaker settlements. The "Delaware Hundreds" were given a separate assembly in 1704, and in 1710 a separate executive council. A common governor was retained until 1776. Such complete self-government existed in the "three lower counties" that they ventured to levy duties on ships passing to and from Philadelphia.

Off the path of travel, this rural district had little vital interest in the dispute with England. But with the other colonies she resisted the Stamp Act and in 1765 entered into a nonimportation agreement, the enforcement of which occasioned considerable disorder. McKean, Rodney, and Read were sent to the first

Continental Congress (*see*) with their hands free to do what seemed best. In 1776 a constitution of "the Delaware State" was adopted, and three years later, 1779, the Articles of Confederation (*see*) were ratified. Delaware early entered into the agitation for better relations between the states, and was the first to ratify the Federal Constitution, which she did on December 7, 1789.

Early Constitutions.—The revolutionary leaders distrusted the constitutional convention of 1776, fearing Tory control and reaction. The constitution, like the others since enacted, was promulgated and never submitted to the people. The legislature consisted of an assembly with seven members from each of the counties, elected for one year, and a legislative council of three members from each county, elected one each year. The president of the state was elected by the joint vote of the two houses, and was almost powerless except when



BOUNDARIES OF THE STATE OF DELAWARE

acting with the privy council, composed of two members elected by each of the two houses. This council appointed most of the state officials. There was a court of appeals consisting of the president and three members from each of the houses. The constitution might be amended by a vote of five-sevenths of the assembly and seven-ninths of the legislative council. This constitution was ridiculed as too complicated for so small a state, and in 1792 a second was promulgated. The name "State of Delaware" was adopted; the governor was given large powers of appointment; the privy council dropped; the legislature became senate and house of representatives. Federalist influence was apparent throughout the instrument. A third constitution, promulgated in 1831, changed the method of amending so that a majority of all the legal voters must be obtained before a convention could be called. The legislature was made biennial; and presidential electors were made elective by the people. Many thought the new method of amendment would effectually prevent further alteration of the fundamental law.

Present Constitutions.—New conditions, especially the abolition of slavery and the growing democratic spirit, stimulated a demand about the middle of the century for a revision. An election was held and a majority of the votes cast favored a convention, but not a majority of all the legal voters. The public, therefore, questioned the legality of the convention which was called, and its work was a failure. But the agitation continued; the Republicans, in 1882, made revision one of the main planks in their platform; and in 1897, the demand becoming irresistable, the present constitution was promulgated. This constitution would probably have been submitted to the people but for the wide-spread feeling that owing to its anti-corruption provisions it would be defeated by the Addicks element. The strength of this element was in the more thinly settled counties, the strength of the representation of which in the legislature was reduced considerably by the constitution. The city of Wilmington had one-third of the population of the state, yet the old constitution gave it only one-fifteenth of the representation. Instead of equal representation to each county, the new constitution provided for legislative districts, the boundaries of each being written into the instrument. The result was a compromise in the direction of representation in proportion to population.

The legislature has the usual powers; but debts may not be created except by a three-fourths vote, and the school funds and education are especially protected. The governor's power of appointment had long been a point of attack, and many officers were now made elective. The office, of lieutenant-governor was created. The governor was given the veto (*see*) power, even for parts of bills, but his veto may be over-ridden by a three-fifths vote. He may grant reprieves, but the pardoning power rests with a board of pardons. The judiciary had been a sore point. Judges had held office for life and there was no pension system, so that decrepit old men held on in order to support their families. Under the new constitution the chancellor and judges are appointed by the governor and confirmed by the senate for twelve years. One associate judge must reside in each county, and all may not be of one political party. To create other courts than those provided for in the constitution requires a two-thirds vote of the legislature. The constitution may be amended by a two-thirds vote in two consecutive sessions of the biennial legislature; and two-thirds of the legislature may refer to the people the question "Shall there be a convention to revise or amend the constitution?"

The local government is of the county type, the affairs of each county being in the hands of a levy court, which corresponds to the coun-

ty commissioners of some states. New Castle County has seven members of the levy court elected for four years. The constitution of 1897 increased the powers of the levy court at the expense of the hundreds, which survive now only as names. Public education in the state is undergoing radical reorganization. The law of 1911 gave to the state board of education, appointed by the governor, control of all schools, and made the county superintendents merely administrative officers under this board. This board is to submit to the legislature of 1913 the draft of a new school code.

Parties and Population.—The Federalist party took control of Delaware as soon as it appeared and survived longer than in any other state, electing the governor in 1826. When the Federalists passed, Delaware became Whig and remained so until the middle of the century. The Democrats then came into power and held it about half a century. Toward the end of the nineteenth century the influence of rising manufactures, the proximity of the powerful Republican organization in Pennsylvania, and other courts, made it into a doubtful state, with a tendency toward the Republican ranks. The Democratic candidate for President received the electoral votes in 1912, the Republican running second and Progressive third in the popular vote. The negro vote holds the balance of power. The population in 1790 was 59,096 (negroes 12,500); 1850, 91,532 (negroes about 20,000); 1910, 202,322 (negroes still above one-fifth).

References: F. N. Thorpe, *Federal and State Constitutions* (1909), I, 557–636; G. S. Messersmith, *Government of Delaware* (1908).

EDGAR DAWSON.

DELEGATES, CREDENTIALS OF. See CREDENTIALS OF DELEGATES.

DELEGATES, TERRITORIAL. A delegate is elected by the legislature of each organized territory to represent it in the national House of Representatives. Delegates are assigned to committees and have the pay and privileges of members, including the right to debate but not to vote. See CONGRESS; HOUSE OF REPRESENTATIVES; TERRITORIES OF THE UNITED STATES, ORGANIZED.

G. H. B.

DELEGATION. The body of men taken as a whole which represents a single state or district in a delegate convention or legislative assembly.

O. C. H.

DELINQUENCY. See CRIMINOLOGY.

DELINQUENTS, CORRECTION OF. Correction has been defined as "the act or process of disciplining or chastening, punishment." In recent years the primary definition of correction has been applied to the dealings of society with delinquents; namely, "the act of correcting, of setting right, the noting and removing of an error or fault." Incidentally, the delinquent is chastened and punished by the loss of his liberty, the restraint of activities and pressure toward a radical change of character; but punishment is no longer recognized as the chief end to be sought. The chief end is to correct the fault.

In furtherance of this effort, new lines of procedure and discipline have been evolved, including the probation system (*see* PRISONERS, PROBATION OF), the adult reformatory, the grade and mark system and the parole system (*see*) both in reformatories and penitentiaries, parole agents, and prisoners' aid societies. These new methods are not yet fully developed but they have the approval of the greater number of the jurists, philanthropists and prison officers who have applied them.

See CRIMINOLOGY; PENITENTIARIES; PRISON DISCIPLINE, PRISONERS, PROBATION OF; REFORMATORIES.

References: H. H. Hart, *Preventive Treatment of Neglected Children* (1910), *Cottage and Congregate Institutions* (1910); Industrial and reform schools *Annual Reports* (for list see U. S. Census volume *Prisoners and Juvenile Delinquents in Institutions*, 1904, 252 *et seq.*); United States Bureau of the Census, *Prisoners and Juvenile Delinquents in Institutions* (1904); *Am. Year Book, 1910*, and year by year.

HASTINGS H. HART.

DEMOCRACY, HISTORY OF

Definitions.—The term "democracy," as used in both technical and popular literature, is vague. It is applied by some to any nation in which the suffrage is widely extended. It was used by Madison and other writers of the revolutionary period in contrast to the term "republican," as involving necessarily the participation of all the voters directly in the government. In recent times there has appeared a respectable body of opinion to the effect that a democracy exists only where all of the adult members of the political society are allowed to vote for all important policy-determining functionaries. And there is still a fourth view of democracy which assumes that the mere political franchise, no matter how widely it may be extended, if unaccompanied by a certain equality of economic opportunity among the members of the political society, does not of itself create a democracy.

In Europe.—In whatever way one may interpret, the meaning of the term, it can hardly be said that the development of democracy in western Europe has any direct connection with the democracies of Greece and Rome. The latter, in a sense, did constitute a step toward popular government by establishing the principle that law is not based upon divine revelation, but is that which the people or ruling class establish. Nevertheless, the democracies of Greece and Rome in their purest form were not based upon the modern principle of universal suffrage, for the mass of the population was servile and hence excluded from political power. Moreover, representative government had not been developed in any form; the city was the state; and only those enfranchised citizens who were actually present in the assemblies could exercise their rights.

During the period intervening between the fall of Rome and the French Revolution, the principle of popular rule in any form was developed only sporadically in the self-governing cities and in those states where the monarchy was modified by a representative system (*see* REPRESENTATIVE GOVERNMENT). But even in the self-governing cities and those countries which had parliaments or estates, the doctrine of universal suffrage was by no means accepted. On the contrary, the principle of class rule and class representation everywhere appeared. (*see* PRIVILEGED STATUS). In tracing to its source the idea that every adult male in a political society is entitled to an equal voice in the government, Dr. Borgeaud finds it in that revolt against all the authoritarian principles in church and state which constituted the essence of what is called the Reformation. James I, with more than his usual acumen, saw in the Puritan idea of self-governing churches the germ of democracy, for, at a discussion where Presbyterian notions were mentioned, he exclaimed, "No bishop, no king!" It is true that the idea of democracy lay explicit in More's *Utopia* and in other theoretical writings of this character; but it was not until the widespread ecclesiastical revolt that it took practical form in churches and social organization. In the Puritan "Admonition to the Parliament," presented to the Commons in 1572, the doctrine was asserted that "instead of being governed by the bishops and the kings the church ought only to obey assemblies of ministers and elders freely chosen in each parish by the faithful, and that to the congregation itself directly consulted ought to belong the final decision of any grave measure." The first important elaboration of this doctrine seems to have been in the "Agreement of the People of England" prepared during the Puritan Revolution by the Independents and presented to Parliament. In this document are announced the sovereignty of the people, biennial parliaments, a single-chambered legislature, distribution of representation according to population, and the extension of the suffrage "to all citizens dwelling in the electoral districts who are of full age and neither hired servants nor in the receipt of relief." Although this radical democratic program was not accepted at that period in England, the ideas embodied in it have reappeared from time to time and some of them in modified form have been practically applied. Neither the Puritan Revolution nor the Revolution of 1688 in England was democratic in its purpose or its outcome, in the sense that it established anything like universal manhood suffrage, for those revolutions were primarily revolts of the upper middle class against monarchical rule. Nevertheless, in innumerable treatises and obscure pamphlets, the democratic notions evolved during the period of the Puritan struggle continued to be expounded and the philosophers who prepared the way for the French Revolution found ready to their hands a great armory of arguments against the absolute monarchy.

It was the French Revolution that really gave the first serious blow to class rule in Europe by the wide dissemination of revolutionary ideas on universal rights, on the basis of which old theories of government are still being attacked. The process, however, by which the suffrage has been more or less widely extended in all the nations of western Europe and the new world has been by no means a simple one. Even the first French constitution of 1791 did not grant universal manhood suffrage, and a constant struggle was waged on behalf of political democracy until that principle was finally realized in the establishment of the Third Republic in 1871. In England the doctrine of manhood suffrage has never been legally accepted; and the franchise, though widely extended, still rests upon a tax paying or a property basis. The extension of the suffrage in that country did not occur at one time but was brought about gradually by the reform bills of 1832, 1867, and 1884, each of which swept away certain old restrictions. Universal manhood suffrage for elections to the national parliament was established in Germany on the formation of the North German Confederation in 1869, and carried over into the Empire on its establishment in 1871. This wide extension of electoral rights was not designed to be the recognition of a natural right, but it was, rather, a shrewd stroke of genius on the part of Bismarck who wished to win support for the new national government by enfranchising all adult males, even though they were not entitled to vote under their respective state constitutions. The extension of the suffrage in the several German states has been accomplished gradually, and manhood suffrage is now by no means universally accepted in all of the commonwealths composing the Empire.

Democracy in America.—In the United States the older English notions of representative government were early developed, and the

right to vote in the colonies and under the first constitutions established after the Revolution was generally restricted by tax or property qualifications which excluded a considerable portion of the adult males from the right to vote in spite of the wide diffusion of property. In the convention (*see* FEDERAL CONVENTION) of 1787, which framed the Federal Constitution, democracy in the sense of government resting on liberal suffrage was feared perhaps even more than monarchy, and one of the chief purposes of the Federal Constitution was to institute a series of checks on the popular rule. It was highly probable that the framers of the Constitution would have placed property qualifications upon the right to vote for members of the House of Representatives if they had been able to agree upon some plan which would have been acceptable to the ratifying states Under the circumstances they left the suffrage to be determined by the several states. The real movement for the extension of the suffrage in the United States did not set in until some time after the adoption of the Federal Constitution; but by the eve of the Civil War the principle of manhood suffrage had been almost universally accepted throughout the United States. The attempt to nationalize the suffrage in the Fourteenth Amendment to the Federal Constitution was the result of a combination of circumstances. The radical Republicans, like Sumner, accepted the doctrine of the rights of man and wished to see their principles embodied in a constitutional amendment. Other Republicans were anxious to penalize the South; and, in general, friends of the negro believed that his enfranchisement was necessary for his self-defence. Accordingly, by the Fourteenth Amendment, it was provided substantially that any state which disfranchised any of its adult males should have its representation in Congress reduced according to the proportion of the voters disfranchised. Although the states have succeeded in disfranchising most of the negro voters, no serious attempt has been made to enforce this provision.

In reviewing the details in the history of democracy one may say, in general, that the extension of the suffrage has been due to a variety of forces, including the agitations carried on by the unfranchised, culminating sometimes in violence, the desire of political leaders to outwit their opponents, and the extension of the doctrines of human rights. Within recent years the notion of democracy has been further extended by the adoption of direct government in the form of the initiative (*see*) and referendum (*see*). Moreover, the suffrage has been extended in a large number of cases to women, giving them the ballot upon the same terms as men.

See CONSTITUTIONS, GROWTH OF; INITIATIVE; LEGISLATION, DIRECT; MINORITY REPRESENTATION; POPULAR GOVERNMENT; PROPORTIONAL REPRESENTATION; REFERENDUM; REPRESENTATION; WOMAN SUFFRAGE; and under POLITICAL THEORIES; SUFFRAGE.

References: C. Borgeaud, *Rise of Modern Democracy* (1894); G. Bradford, *Lessons of Popular Government* (1899); F. A. Cleveland, *Growth of Democracy in the United States* (1898); A. Aulard, *The French Revolution* (1910); H. Croly, *Promise of Am. Life* (1909); J. H. Rose, *Rise of Democracy in England* (1897); G. L. Scherger, *Evolution of Modern Liberty* (1904). CHARLES A. BEARD.

DEMOCRACY AND SOCIAL ETHICS. The belief that the social value of our ethical code bears a definite relation to the area of its base, is but one part of the creed of democracy, whose foundation and guarantees are laid in diversified experience, with the resultant understanding of human life.

Democracy and Human Interests.—As the governing class has been increased by the enfranchisement of one body of men after another, the art of government has been enriched in interests and has been humanized in proportion to its democratization. When the middle class broke into government during the eighteenth century, they at least added the property of the petty tradesmen to inherited vested interests, and the ambitions of their sons, if not more intense than those of the young nobles, whose careers were confined to the army, church and state, were yet much more diversified and constantly forced government to consider the problems of commerce. When the working man, represented by the revolutionaries of '48 in Germany, and the Chartists in England, demanded, during the nineteenth century, their representation in government, they brought an entirely new range of subjects before national parliaments; and in spite of the prevailing *laissez faire* philosophy forced legislation to regulate the conditions of mines and factories, the hours of labor and, at length, even the minimum rates of wages. The phenomenal entrance of women into governmental responsibility in the dawn of the twentieth century is coincident with the consideration by governmental bodies of the basic human interests of the nurture and protection of children, and of public health and recreation. Increasing the size of the governing body has automatically increased the variety and significance of government, and has enabled society to express through legal enactment its ethical concern for those aspects of life which were formerly considered quite outside of governmental control. When all the people become part of the governing class there inevitably arises a strong sense of collective responsibility, and a keen desire to use the common resources and organizations of the community for the supplying of public needs.

Daily Experience and Social Justice.—But self-government, though one of the great in-

struments in the hands of men who crave social justice, must ever be built up anew in relation to daily experience, or it may, like other instruments, be turned to base uses. Fortunately this power of renewing the ethical impulses, of discovering the needs of the people for relief and guidance, is manifested in many directions.

The great modern discoveries in education, so far as its democratic aspects are concerned, have come through the study and care of the feeblest members of society. The movement designated as manual training, resulting in the founding of technological institutions, began in the despairing efforts of a handful of teachers who endeavored to reach the flickering intelligence of the feeble minded through directed movements of the muscles; the first careful study of the relation between an under-developed mind and moral delinquency is being made in the psychopathic clinics established in relation to the juvenile court and reform schools; and the most painstaking effort ever made to determine the effect of social and industrial environment upon character, is being carried on in the criminological institutes founded in the schools and prisons for wayward girls. All these educational efforts demonstrate that the most effective entrance into the jungle of human ignorance and weakness can only be found through a sympathetic understanding of the units of which it is composed. We have one more illustration that the primitive emotion of compassion, when properly trained and guided, may be the basis of an enlarged comprehension of ethical obligations.

The situation has many indirect results. Quite as the care of the child is the test of successful family life and at the same time supplies the daily impulse for its continuance, so gradually the city itself is being forced to the same criterion. If the death rate among children is abnormally high in the tenement districts, that fact in itself justifies a crusade which may result, as in London, in the erection of municipal tenements; in Paris in cutting broad boulevards through the most wretched districts; in New York in the appointment of a tenement commission with drastic powers. No modern city could possibly remain indifferent when the fact had been established that its rate of infant mortality was excessive, so completely have we accepted the democratic test of our public morality.

Economy and Social Reform.—In addition to the social ethics embodied in government and in education, we find that the economists who first considered only wealth, are groping their way from the darkness of the nineteenth century which looked upon the nation as an agglomeration of selfish men, moved by self interest, to a moral revolt against the squalid aspects of life. As a result of this contract a leading American economist has formulated a program of social reform founded upon the ascertained needs of young children, casual laborers and the unemployed. Such a program could not have been formulated by a scientist who had studied life conditioned only by economic forces but must have been enunciated by one convinced of the permanent dignity of human existence. It is as if the men most exclusively devoted to the analysis of economic conditions had been fairly driven to contemplate them from the ethical and social point of view.

Socialization of Religion.—The present democratization and socialization of religion would indicate that the church is reaching another of those crises which have forced its representatives to leave the temples and the schools in order to cast in their lot with the poor, to minister without ceremony or ritual, directly to the needs of the sinner and outcast. Only when the religious teacher shall go forth as the legislator, the educator and the economist have done, into the midst of modern materialism, can we effectually insist upon the eternal antithesis between the material and the spiritual and revive religious enthusiasm as social ethics have been renewed, through the democratic contact with life.

Reference: J. Addams, *Democracy and Social Ethics* (1902). JANE ADDAMS.

DEMOCRATIC DONKEY. A symbol representing the Democratic party, originated by Thomas Nast in his cartoon of January 15, 1870: "A Live Jackass Kicking a Dead Lion," which represented the Democratic press attacking Edwin M. Stanton (*see*) after his death. This was the first instance of the use of the donkey to represent Democratic sentiments.

O. C. H.

DEMOCRATIC GOVERNMENT. This phrase, practically identical with Republican government, means simply a government by the people (*see* REPUBLICAN FORM OF GOVERNMENT). It applies to direct government by mass meeting of the citizens, like that of the New England towns and of the Swiss cantons; and also to representative government. Some efforts have been made to induce the courts in states where the referendum is in use to hold that it is not democratic government, and the same objeetion has been brought against commission government for cities (*see*). So far, the courts have refused to hold either popular legislation or government by a small body of elected persons to be undemocratic. See DEMOCRACY, HISTORY OF; DEMOCRACY AND SOCIAL ETHICS; GOVERNMENT, THEORY OF; INDIVIDUALISM, THEORY OF; INITIATIVE; LEGISLATION, DIRECT; LOCAL SELF GOVERNMENT; MINORITIES, RIGHTS OF; POPULAR GOVERNMENT; PRIMARY, DIRECT; PSYCHOLOGY OF THE CROWD; REFERENDUM; REPRESENTATIVE GOVERNMENT; SOVEREIGNTY OF THE PEOPLE; SUFFRAGE. A. B. H.

DEMOCRATIC PARTY

Beginnings.—The beginnings of the present Democratic party, as distinct from its predecessor, the old Republican or Democratic-Republican party, are to be found in the period of political and party reorganization which coincides in general with the administration of John Quincy Adams (1825–29). The decade following the War of 1812, with its rapid growth of settlement in the West and of industrialism in the East, brought into active political life in the states large numbers of men who, lacking the prestige of family, education, or wealth, were naturally in opposition to Adams and to the aristocratic ideas which he was believed to represent. Of this new political force Jackson was at once the embodiment and the leader (*see* JACKSONIAN DEMOCRACY). Although there was nothing in the election of 1824–25 to show that Jackson was the popular choice, his insistence that he was such came to be widely believed. The supporters of Crawford presently declared for him. Calhoun, rapidly becoming a strict constructionist, sided with him as a representative of "the people;" while Van Buren contributed to the cause the political organization and the spoils system which, as a member of the Albany regency, he had helped to develop in New York. Under the name of "Jackson men" (*see*), a national following distinct from the older Jeffersonian Republicans was clearly recognizable by 1826, although it was not until after the election of 1832 that the name "Democrats" came to be generally used as the party designation.

The Jacksonian Period (1829–1837).—In the election of 1828, Jackson received 178 electoral votes against 83 for Adams. The popular vote stood 647,231 for Jackson and 509,097 for Adams. New England voted for Adams, and in New York, Maryland, Louisiana, and Ohio the Jackson majorities were small; but in Pennsylvania the vote was as two to one (101,652 to 50,848) in Jackson's favor, while in no southern or western state was the electoral vote given for Adams. The Twenty-first Congress (1829–31) was Democratic in both branches.

The task of Jackson was to provide the elements of a party creed to which his heterogeneous following would adhere. For his first step, a clean sweep of the federal civil service, there was general approval. His attack upon the Bank of the United States (*see* BANK OF U. S., SECOND) voiced a bitter hostility to that institution which had long existed in the West and South, and which was not without ominous approval in New York and Pennsylvania. His veto of the Maysville Turnpike bill, in 1830, showed him to be, in the matter if internal improvements (*see*), a strict constructionist. When in July, 1832, he vetoed the bill to recharter the bank, he added to his platform a denunciation of government monopolies and a further elaboration of the doctrine of strict construction; and he challenged popular approval by making the bank an issue in the presidential campaign. On the other hand, his vigorous handling of nullification (*see*) in South Carolina, in 1832–33, though in part, perhaps, inspired by his hatred of Calhoun, with whom he had broken in 1831, made it clear that the advocates of state rights could not count upon his support if they went to extremes; but his tenderness towards Georgia in the case of the Cherokee Indians, when she successfully opposed the authority of the federal court, considerably weakened the force of his position.

On none of these points did Jackson, apparently, feel the need of consistency, nor did his party demand it. He signed the tariff act of 1832 notwithstanding the essentially protective character of the measure. Numerous bills for internal improvements also received his approval. Nevertheless, the election of 1832 was rightly interpreted as an indorsement of his policies. His popular majority (687,502 for Jackson against 530,189 for Clay and Wirt) was slightly more than in 1828, and the electoral vote was overwhelming. Moreover, he had forced the acceptance of Van Buren as Vice-President, thereby putting him in line for the presidency in 1836; he had removed Calhoun from the list of presidential possibilities; and had seen "Jackson" governors chosen in Maine, Pennsylvania, Ohio, and Kentucky. The Twenty-second Congress (1831–33), which had had an opposition majority in the Senate and a bare Democratic majority in the House, was followed by a Congress (1833–35) with an overwhelming Democratic predominance in the House; the Calhoun or nullification Democrats in the Senate, however, allying themselves with the National Republicans (*see*), gave a majority in that body against the administration and in favor of the bank. In September, 1833, the public deposits were removed from the bank and placed in selected state banks (*see* REMOVAL OF DEPOSITS). For this the Senate censured Jackson and refused to confirm some important nominations (*see* JACKSON, ANDREW, CENSURE OF); but the publication of the Cabinet paper containing Jackson's reasons for the removal of the deposits, together with his able and vigorous protest against the resolution of censure, rendered the action of the Senate impotent and strengthened Jackson with the masses. The Senate opposition in the Twenty-fourth Congress (1835–37) was turned into an administration majority before the end

of the first session, and in January, 1837, the resolution of censure was expunged. With the practical extinguishment of the national debt, the distribution of the surplus revenue among the states (*see* REVENUE, SURPLUS), and the drastic attempt of the "specie circular" to substitute "hard money" for bank notes, the contribution of Jackson to the creed of the new Democratic party was completed.

In the work of perfecting a national party organization, however, little progress had been made. The nomination of Jackson in 1832 came from state legislatures and local bodies. The Baltimore convention of that year, called to nominate Van Buren for the vice-presidency, comprised delegates from every state except Missouri. The convention adopted the "two-thirds rule" (*see*) to which later conventions have adhered, but framed no platform beyond a resolution concurring in the "repeated nominations" of Jackson. The Baltimore convention of 1835, which nominated Van Buren, was a mass meeting in which 181 of the 626 delegates came from Maryland, and 241 from New Jersey, Pennsylvania and Virginia. An attempt to reject the two-thirds rule failed; but while the opposition to Van Buren did not prevent him from receiving a unanimous vote, the delegates from Virginia announced that that state would not support Richard M. Johnson of Kentucky, the vice-presidential nominee. No platform was adopted.

From Van Buren to Polk (1837–1845).—The election of 1836 showed serious divisions within the Democratic party, and the growth of a formidable, though as yet disunited, Whig opposition. Of the 294 electoral votes Van Buren received 170, while his popular majority, 761,594 against 736,656 for the combined opposition, was very small. Georgia and Tennessee voted for White, an opposition Democrat; New Jersey, Ohio and Indiana, which had voted for Jackson in 1832, now voted for Harrison, the leading Whig candidate. The Twenty-fifth Congress (1837–39) had a Democratic majority in both branches, most of the Calhoun Democrats supporting the administration; but the Whig vote in the House showed marked gains. Van Buren, as Jackson's political heir, had to bear the odium of the panic of 1837. A proposal to establish an independent, or sub-treasury system (*see*), already voted down by the Democrats in 1834–35, was passed by the Senate but twice rejected by the House, a Democratic faction known as Conservatives uniting with the Whigs to defeat it. In 1840, however, the independent treasury was at last established, and the Democrats were free from the embarrassing issue of state banks. Federal appropriations for internal improvements also ceased.

Van Buren had held his party to a strict construction program, and towards the end of his term opposition to him disappeared; but the opposition to Vice-President Johnson was strong. The Baltimore national convention of 1840, called, as were those of 1831 and 1835, by the Democratic members of the New Hampshire legislature, unanimously renominated Van Buren, but left the selection of a vice-presidential candidate to the states. A platform and a lengthy address to the people were adopted. The platform, comprising nine resolutions, affirmed adherence to strict construction and the "liberal principles" of the Declaration of Independence, declared in favor of economy, upheld "the separation of the moneys of the government from banking institutions," and condemned internal improvements, protection, and the bank. A new issue, soon to be of momentous consequence, appeared in the declaration of the platform against federal interference with slavery in the states, and in condemnation of the abolition movement (*see* ABOLITIONISTS). The Whigs carried the day. The popular vote for Van Buren was 1,128,702 against 1,275,017 for Harrison; but of the 294 electoral votes Van Buren received only 60. The only states in the Democratic column were New Hampshire, Virginia, South Carolina, Alabama, Missouri, Arkansas, and Illinois.

But, although defeated in the election, the Democrats had found themselves as a party; their principles had been formulated, and their leader was the most astute politician of his day. The break between Tyler and the Whigs worked for their advantage, although few Democrats accepted Tyler as a leader. The state elections of 1841 were favorable to the Democrats, and in the Twenty-eighth Congress (1843–45) they had a large majority in the House. Before the national convention of 1844 met, Van Buren had been renominated by all but two of the state conventions. The only organized opposition was in South Carolina and Georgia, which supported Calhoun, and in Kentucky and Missouri, where there was factional support for Johnson. But on April 22, 1844, Tyler laid before the Senate a treaty for the annexation of Texas. The demand for annexation was strong in the South, where the needs of cotton and slavery were believed to present unanswerable arguments in its favor; and in parts of the West and Southwest, where "expansion" and "manifest destiny" (*see*) made instinctive appeal. The publication of a letter from Van Buren, opposing annexation without the consent of Mexico (*see* ANNEXATIONS TO THE U. S.) cost him the presidential nomination. Although a majority of the delegates to the Baltimore convention, in May, were instructed for him, their loyalty was not assured, and on the ninth ballot a "dark horse," James K. Polk of Tennessee, was unanimously nominated. The candidate for Vice-President was George M. Dallas of Pennsylvania.

The platform reasserted the principles of 1840, added a declaration "that our title to the whole of Oregon is clear and unquestion-

able," and demanded "the reoccupation of Oregon and the reannexation of Texas at the earliest practicable period." The rejection of the treaty by the Senate, June 8, when seven Democrats joined the Whigs in voting against it, did not affect the party attitude in the country; and annexation was practically the only issue in the campaign. The popular vote was close. Of the 275 electoral votes Polk received 170, but he had a minority of the popular vote, and his plurality was only 36,695. As an illustration of sectionalism, the vote was without special significance; for while Polk carried eight of the thirteen slave states, he also carried New York, Pennsylvania, Michigan, Indiana, and Illinois. The Twenty-ninth Congress (1845–47) was Democratic in both branches.

Texas and Slavery Extension (1845–1854).—The condemnation of the Abolitionists in 1840, with the reassertion of the platform declarations of that year in 1844, committed the Democratic party to the support of slavery to the extent of shielding it from congressional interference. By the joint resolution of March 1, 1845, for the annexation of Texas, slavery was prohibited in any states that might be formed from Texas north of 36° 30′, the Missouri Compromise line (*see* MISSOURI COMPROMISE), but permitted it south of that line in any states which might choose to have it. Polk proved himself a skillful and masterful politician, dominating his Cabinet and largely controlling his party in Congress; but all his ability could not prevent the growth of sectionalism which slavery, now increasingly viewed as a moral issue, rendered inevitable. When in May, 1846, he sent his famous war message to Congress, even the Whigs, although they denounced as false the assertion that a state of war existed "by the act of the Republic of Mexico," generally voted for the declaratory resolution and supported the war afterwards; but when, in August, an appropriation of $2,000,000 to buy territory from Mexico was pending, it was a northern Democrat, Wilmot of Pennsylvania, who offered a proviso forever prohibiting slavery in the proposed acquisition. By the combined votes of Whigs and northern Democrats the Wilmot proviso (*see*) passed the House, but it was not acted upon by the Senate. In rejoinder, many southern Democrats opposed a resolution directing the termination, on twelve months' notice, of the joint occupation of Oregon by the United States and Great Britain. When in June, 1846, a treaty with England fixed the northern boundary at 49° instead of 54° 40′, it was clear that the demand of the Democratic platform of 1844 had been materially modified; but the southern Democrats voted against a House bill for the organization of a territorial government in Oregon with the Wilmot proviso, and the Senate left the bill without action.

In the session of 1846–47 the House followed the Senate in appropriating $3,000,000, without the Wilmot proviso, for the purchase of Mexican territory; but on the application of the proviso to Oregon there was still no agreement. The factional struggles of "Hunkers" (*see*) and "Barnburners" (*see*) in New York weakened the party in one of the most important states. In the Thirtieth Congress (1847–49) an increased Democratic majority in the Senate was offset by a narrow Whig majority in the House; many free state Democrats were now opposed to the Wilmot proviso, and on a bill to create territorial governments in Oregon, New Mexico, and California, they voted against a proposal for referring to the supreme court the question of slavery in these territories, and so defeated the measure. Fortunately for all parties, the threatened division of the country between slavery and freedom was averted by the organization, in August, 1848, of the territory of Oregon without slavery.

Polk was not a candidate for reëlection, and the Democratic national convention at Baltimore, in May, 1848, nominated Lewis Cass of Michigan and William O. Butler of Kentucky. The platform reasserted the familiar principles of 1840 and 1844, and commended Polk and his administration. On the question of slavery, however, it was silent, and a resolution affirming that "the doctrine of non-interference with the rights of property of any portion of the people of this confederacy . . . is the true republican doctrine" was rejected by a vote of 36 to 216. But the convention was not a unit. The "Barnburner," or free soil, delegates from New York seceded, and at a convention at Utica, in June, nominated Van Buren. The nomination was repeated by a Free Soil (*see* FREE SOIL PARTY) convention at Buffalo, in August, and the identification of the Democrats with slavery extension was complete. The outcome of the election was foreseen, and the campaign was not exciting. Taylor and Fillmore, the Whig candidates, received 163 electoral votes against 127 for Cass and Butler; the popular votes were 1,360,101 and 1,220,544 respectively. Cass received the electoral votes of six southern states (Virginia, South Carolina, Alabama, Mississippi, Texas, and Arkansas) and one border state (Missouri); but the five states formed from the old Northwest Territory, in which slavery was forever prohibited, voted for him, as did Iowa and Maine. The popular vote for Van Buren, 291,263, is not an entirely accurate indication of the strength of the free soil Democrats, since the vote of the Liberty party was also cast mainly for him. In the Thirty-first Congress (1849–51) the Democrats retained control of the Senate, but a group of nine free soilers held the balance of power in the House.

It was the Whigs, however, and not the Democrats whose days as a party were numbered. The free soil Democrats could not join the Whigs, now that that party had de-

clined to commit itself against slavery; while the antislavery Whigs broke away for the same reason. The pro-slavery Whigs, on the other hand, by uniting with the Democrats, made that party increasingly pro-slavery, with the result that the control of the party passed mainly into the hands of its southern members. Neither party, however, was as yet prepared to take a decided stand, and the Democrats least of all, partly because a sectional issue could not be the chief tenet of a national party, and also because the votes of pro-slavery states were not sufficient to carry an election. The history of the Compromise of 1850 (*see*) is given elsewhere. The compromise, although opposed by southern extremists who demanded the right to hold slaves anywhere, was for the moment generally acquiesced in throughout the country, and completed the solidification of the Democratic party. The elections of 1850 gave the Democrats control of both houses in the Thirty-second Congress (1851–53). The national nominating convention at Baltimore, in June, 1852, adopted with enthusiasm a platform which pledged the party to a faithful execution of the compromise measures, including the fugitive slave act (*see* FUGITIVE SLAVES); but not until the forty-ninth ballot was it able to agree upon a candidate for President, Franklin Pierce of New Hampshire. For Vice-President, William R. King of Alabama was nominated. In the election Pierce received 254 electoral votes against 42 for Scott, his Whig opponent, and a popular vote of 1,601,474 in a total of 3,144,207. The only states which cast electoral votes for Scott were Vermont, Massachusetts, Kentucky, and Tennessee. The country appeared to be almost solidly of a Democratic mind, and the party majority in the Thirty-third Congress (1853–55) was overwhelming.

The Kansas Questions; Schism (1854–1860). The political calm which for a brief time had followed upon the Compromise of 1850 was shattered, in 1854, by the passage of the Kansas-Nebraska Act (*see*), repealing the Missouri Compromise and applying to the two new territories the principle of popular sovereignty. (*see*). Although Douglas, the leader of the more moderate wing of the Democrats in the North, defended the act upon principle as the only equitable treatment of the territorial claims of slavery, the act was nevertheless a surrender to the extreme claims of the South, lately voiced with increasing arrogance. The Democrats were no longer a united national party. The bill passed the Senate by the votes of southern Democrats and Whigs, but in the House the northern Democrats divided, 44 voting in favor of the bill and 44 against it. The split extended to the states: in New York, where the party had never been for any long period firmly united, there were two factions, known as "hards" (*see*) and "softs" (*see*). Even so, however, the policy of "squatter sovereignty" might have been continued indefinitely but for the scandalous travesty of popular government in Kansas, and the evident purpose to force slavery upon the territory (*see* KANSAS STRUGGLE), lawfully or lawlessly as might prove the more convenient. Before 1854 had passed, the Anti-Nebraska opposition in the North had developed, in a number of states, into a new Republican party (*see*) with loose construction and free soil principles. An attempt in Congress to divert attention from the main issue by reviving the question of internal improvements failed. In the Thirty-fourth Congress (1855–57) the Democrats retained firm control of the Senate, but in the House the Democratic vote of 159 in the previous Congress was reduced to 79, and the combination of Anti-Nebraska men and Know-Nothings (*see*) had a majority (*see* AMERICAN PARTY).

Pierce's candidacy for a second term had strong support in the South, where his pro-slavery attitude in the Kansas troubles was generally approved. Douglas was popular in both the South and the West. The claims of James Buchanan of Pennsylvania, who, although a consistent opponent of abolition, was not of extreme pro-slavery bias, and who had the advantage of having been minister to England during most of Pierce's administration, were skillfully urged. In June, 1856, the national convention at Cincinnati, on the seventeenth ballot, unanimously nominated Buchanan, associating with him, as the candidate for Vice-President, John C. Breckinridge of Kentucky. The platform supported at length the principles of the Compromise of 1850 and the Kansas-Nebraska Act, but was otherwise without novelty save for its condemnation of the new American party and its approval of the Monroe Doctrine (*see*). The campaign, sluggish at first in the South, was intensified in the early fall by open threats of secession in the event of Republican success. Buchanan appealed to the conservative element of his party by repeatedly pledging himself to insure, if elected, an honest vote in Kansas; and the Republicans, though waging their campaign with enthusiasm, could not carry the country. In the election Buchanan received 174 of the 296 electoral votes, carrying all the slave states except Maryland, and in addition New Jersey, Pennsylvania, Indiana, Illinois, and California. In the popular vote he received nearly 500,000 more votes than Frémont, the Republican candidate, but his vote was about 371,000 less than the combined opposition. The Thirty-fifth Congress (1857–59) was strongly Democratic in both branches.

Twenty-eight years were to pass before Democratic party again elected a President. From the first, Buchanan's administration had to carry heavy burdens. The Dred Scott decision (*see*), accepted by the Democrats as a complete substantiation of their slavery policy, but

repudiated by the Republicans; the agitation for Cuban annexation; the demand for a reopening of the African slave trade; and, most of all, the persistent attempt to force upon Kansas the Lecompton constitution (*see* ANTI-LECOMPTON DEMOCRATS), all combined to stamp the party as hoplessly sectional and pro-slavery, and to accelerate the drift towards secession. In the Thirty-sixth Congress (1859–61) a party split, together with an increase in the number of Know-Nothing members, lost the Democrats the control of the House, although the Republicans alone did not have a majority; while the partisan Covode investigation concerning the action of the administration in Kansas affairs left a bad impression. In the North the Douglas Democrats, rebelling against the policy of the administration in Kansas, comprised the rank and file of the party in that section; but the disunion sentiment of the South was not without sympathy in the North, federal office-holders generally supported Buchanan, and the Lincoln-Douglas debates of 1858 showed Douglas still a supporter of slavery and an aggressive upholder of the Dred Scott decision.

At the Democratic national convention at Charleston, in April, 1860, the Douglas element tried hard to evade the leading issue, but in vain. A platform reaffirming the declarations of 1856, favoring a Pacific railway and the acquisition of Cuba, and denouncing state enactments in opposition to the fugitive slave law, was adopted; but a resolution pledging the party to abide by the decisions of the Supreme Court "on the questions of constitutional law" was rejected. Thereupon a majority of the delegates from ten slave-holding states, including all of those from Florida, Alabama, Mississippi, and Texas, withdrew. The convention, after 57 ballots, failed to nominate candidates, and adjourned to meet at Baltimore in June. The seceding delegates arranged for a June convention at Richmond. When the regular convention reassembled at Baltimore, it nominated Douglas for President and Benjamin Fitzpatrick of Alabama for Vice-President. Most of the southern delegates again seceded, and, reinforced by some of the Charleston dissentients, nominated John C. Breckinridge of Kentucky and Joseph Lane of Oregon for President and Vice-President, respectively, and adopted a platform affirming the right of slaveholders to take their slaves into any territory, under the protection of the Federal Government. Later the national comittee chose Herschel V. Johnson of Georgia to replace Fitzpatrick, who declined to stand.

The Democratic breach was beyond healing, and strenuous efforts to elect fusion tickets in close states of the North were without avail. The election, indeed, shed for the moment a ray of hope. Although Lincoln received no votes in the lower South and only a handful in the border states, the combined vote for Bell, the Constitutional Union candidate, and Douglas, both standing on union platforms, showed in the South a majority of more than 100,000 over Breckinridge. But the rapid organization of secession, facilitated by the strict construction weakness of Buchanan, brought upon the party widespread odium and distrust, and went far to destroy its usefulness as a party of opposition. Not until 1875 was it again able to control either house of Congress.

During the Civil War (1860–1865).—It was inevitable that the exigencies of civil war and reconstruction should markedly affect both the personnel and the organization of the Democrats, and at the same time alter fundamentally some of their historic principles. Many of the War Democrats (*see*) eventually became Republicans, while in a number of northern states the nomination of Union candidates weakened the effectiveness of the Democratic organization (*see* UNION PARTY). For the most part, however, the regular Democratic organization was kept up, and separate tickets were nominated wherever there seemed a chance of success. The early measures for the vigorous prosecution of the war generally received Democratic support, although in so doing the strict construction principles of the party necessarily underwent modification. But to anything like a general relinquishment of its historic position, however, the party in Congress declined to yield. The "iron-clad oath" of 1862, the Legal Tender Act of the same year, and the protective tariff changes evoked definite party opposition; while the Emancipation Proclamation, the wholesale suspension of the privilege of the writ of habeas corpus in the North, and the suggestion of negro suffrage by federal enactment gave ground for charging that the war was no longer waged for the preservation of the Union, but for the enfranchisement of the former slaves. The persistent characterization of all Confederates as "rebels," and of all "southern sympathizers," or "Copperheads," in the North as "traitors," also had its effect.

Great as was the provocation, however, it was clearly the part of wisdom to avoid committing the party to opposition to the war; but the Democratic national convention at Chicago, in August, 1864, invited defeat. The platform, though pledging adherence to the Union "with unswerving fidelity," and condemning strongly the arbitrary measures and usurpations of authority on the part of the administration, nevertheless declared that "after four years of failure to restore the Union by the experiment of war," the public interest demanded "that immediate efforts be made for a cessation of hostilities." General George B. McClellan was nominated for President and George H. Pendleton of Ohio for Vice-President. McClellan was believed to be a popular candidate, but although he accepted the nomi-

nation he could not truthfully stand upon a platform which declared that the war had been a failure, and in his letter of acceptance virtually repudiated it. His frankness held many Democrats to party allegiance. His popular vote was 1,808,725 against 2,214,067 for Lincoln, and of the soldier vote of 150,635, 33,748 was cast for him; but he received only the 21 electoral votes of New Jersey, Delaware and Kentucky. In the House, the Democratic representation of 75 in the Thirty-eighth Congress (1863–65) shrank to 40 in the Thirty-ninth Congress (1865–67), and in the Senate there was also Republican gain.

The Period of Reconstruction (1866–1876).—The position of the Democratic party during the period of reconstruction was one of extreme difficulty. Hopelessly in the minority in Congress, the Democrats could neither modify nor impede the action of the Republican majority; nor did it at first seem likely that there would develop, in the nation or the states, any issue, political or economic, important enough to overshadow reconstruction so long as the latter question remained open. On the constitutional issue of coercing the South in the reëstablishment of state governments and restoration to the Union, the natural sympathy of the Democrats was with the strict construction policy of Johnson; but Johnson was not only hostile to them, but by implication virtually committed them, in his veto of the first Civil Rights bill (*see*), in 1866, to the support of southern pretensions which, had they been admitted, would have undone many of the results of the war. Each widening of the breach between Congress and the President, accordingly, added to the difficulty of the Democratic position by identifying them, in the popular mind, with executive opinions which the dominant majority was prepared to negative as unsound and mischievous. The minority report of the joint committee on reconstruction, written by Reverdy Johnson of Maryland, has been aptly characterized as "the veriest sophistry of juristic abstraction." In August, 1866, a national convention at Philadelphia brought together both northern and southern Democrats and a few prominent Republicans, but the resolutions adopted presented the Johnson doctrines in such extreme form as to help neither the Democrats nor the administration. In the Fortieth Congress (1867–69), the Senate showed 40 Republicans and 14 Democrats, and the House 138 Republicans and 47 Democrats. Only in the South had Democratic candidates for state or local offices been generally elected.

Opposition to the Republican policy of reconstruction, however well grounded in constitutional theory or in patriotic desire to heal as quickly as possible the political wounds occasioned by the war, could not, under the circumstances, afford ground for success in the presidential campaign of 1868. The situation was not improved by the appearance of the greenback heresy (*see* PAPER MONEY). No provision had yet been made for a resumption of specie payments; the premium on gold was high; and United States gold bonds were increasing in value. Of the numerous proposals for relieving the financial pressure, the one which at the moment found most favor in the central West was that which demanded the payment of the debt in greenbacks, or other lawful money, in all cases where payment in gold was not expressly stipulated. The greenback movement was especially strong in Ohio, where it was championed by Pendleton, the Democratic candidate for Vice-President in 1864 and the leading candidate for the presidential nomination in 1868. The fact that the greenback policy was in direct opposition to the historical hard money policy of the party did not prevent the rapid spread of the propaganda in the West; and it was well known that the policy of virtual repudiation had support among the Republicans as well. Among eastern Democrats, on the other hand, the greenback argument met with less favor, and a strong opposition to Pendleton developed, especially in New York (*see* GREENBACK PARTY).

The Democratic national convention met in Tammany Hall, New York City, in July, 1868. The platform, dictated by the western wing of the party, and adopted before the nomination of candidates, severely arraigned the reconstruction policy of the Republicans; demanded the "immediate restoration of all the states to their rights in the Union under the Constitution," and "amnesty for all past political offences and the regulation of the elective franchise in the states by their citizens." No mention was made of greenbacks by name, but the platform demanded that "where the obligations of the government do not expressly state upon their face, or the law under which they were issued does not provide, that they shall be paid in coin, they ought, in right and justice, to be paid in the lawful money of the United States." There should be "one currency for the government and the people, the laborer and the office-holder, the pensioner and the soldier, the producer and the bond-holder."

The leading opponents of Pendleton were General Winfield S. Hancock of New York and Chief-Justice Salmon P. Chase of Ohio. When it was seen that neither of them could break Pendleton's support, and that Pendleton could not carry the convention, the latter's name was withdrawn and a stampede followed for Horatio Seymour of New York, the chairman of the convention, who was unanimously nominated. The vice-presidential nominee was General Francis P. Blair, Jr., of Missouri. Blair was a Union soldier, but a bitter opponent of Republican reconstruction. Only five days before the convention met, when he himself was understood to be a candidate for

the presidency, he had in an open letter declared that the next President should proclaim the reconstruction acts void, "compel the army to undo its usurpations at the South, disperse the carpet-bag state governments, allow the white people to reorganize their own governments, and elect Senators and Representatives." With a platform which frankly stood for repudiation, and the possibility that, if successful, they would attempt to overthrow by force the reconstruction work of Congress, the position of the Democrats was not strong. Seymour, though opposed to repudiation, accepted the platform. The Republicans had denounced "all forms of repudiation as a national crime," and nominated Grant as their candidate. The result of the election showed again the totally misleading character of the electoral vote as an indication of popular preference. Of a total of 294 electoral votes Seymour received only 80, but his popular vote was 2,709,543 against 3,015,068 for Grant. Virginia, Mississippi and Texas, not having yet been reconstructed, did not vote. Seymour carried New York—by fraudulent aid of the Tweed Ring, it was charged—New Jersey, Delaware, Maryland, Georgia, Louisiana, Kentucky and Oregon. The remaining states went Republican. In the Forty-first Congress (1869–71) a slight Democratic gain was made in the House.

It was as impossible for the Democrats to control the completion of reconstruction as it had been to modify its earlier course; but while they did not deny the activity of the Ku Klux Klan (*see*), they insisted that the reports of outrages were exaggerated, and that the disorders were the natural result of the Republican policy; and they opposed consistently, though ineffectually, the drastic acts for enforcing the Fourteenth and Fifteenth Amendments and controlling federal elections. The outlook for the party, however, was more hopeful. In 1870 the Democrats, with the aid of "liberal" Republicans, carried the state election in Missouri, and the next year the Republican opposition to the reëlection of Grant spread to Ohio and other states. In 1871, when the admission of Georgia completed the restoration of the South, the Senate comprised 61 Republicans and 13 Democrats, the House 172 Republicans and 71 Democrats. The Forty-second Congress (1871–73) had in the Senate 57 Republicans and 17 Democrats, the House 138 Republicans and 103 Democrats. In 1872 a Liberal Republican (*see*) convention at Cincinnati nominated Horace Greeley of New York and B. Gratz Brown of Missouri for President and Vice-President respectively, on a platform which unsparingly condemned Grant and his party; pledged the maintenance of "the union of these states, emancipation, and enfranchisement;" demanded "the immediate and absolute removal of all disabilities imposed on account of the rebellion," and "a thorough reform of the civil service;" denounced "repudiation in every form and guise," and called for "a speedy return to specie payments." The Democratic convention at Baltimore accepted the platform and the candidates. A "straight" Democratic convention at Louisville repudiated the action of the Baltimore convention, but its nominees refused to stand. There was no enthusiasm for Greeley, and his death a few days after the election added to the confusion. The Republicans swept the field, the popular majority for Grant being over 700,000. The Forty-third Congress (1873–75) showed a heavy Democratic loss in the House.

The second administration of Grant (1873–77) was beset with troubles which, if they afforded but scanty ground for the development of new Democratic doctrine, nevertheless tended to win for that party increased popular support. The frequent calls for federal troops to uphold tottering Republican state governments in the South, the disclosures of the Whiskey ring (*see*) and other evidences of official corruption, together with the panic of 1873, worked to the advantage of the opposition, and strengthened the conviction, now rapidly spreading throughout the country, that the party in power was concerned less with the national welfare than with the perpetuation of its own control. The "tidal wave" appeared in the state and congressional elections of 1874, when the Democrats elected their tickets wholesale throughout the country, won 182 of the 292 seats in the House, and materially increased their strength in the Senate. Alabama, Arkansas and Texas chose Democratic governors and legislatures; South Carolina was barely saved for the Republicans; Mississippi elected a Democratic legislature in 1875. The only thing that delayed the coming of a "solid South" was the continuance of federal troops in South Carolina, Florida, and Louisiana (*see* RECONSTRUCTION).

Contested Election; New Issues (1876–1884).—The presidential election of 1876 was clearly to be the most momentous since 1860. The passage of the act of January 14, 1875, for the resumption of specie payments, was a powerful appeal to conservative men for Republican support; but the party failed, in the short session of 1874–75, when it had an opportunity, to guard against a disputed election by providing adequate regulation of the electoral count. As the Democrats could not but oppose resumption, they were forced to make the campaign chiefly on the old issues of reconstruction and reform. Of the first of these issues the country was indeed weary, but on the second the North hesitated to trust a party inseparably bound to the South. The long platform of the Democratic national convention at St. Louis, in June, violently attacked the Republican policies, denounced the resumption act as a hindrance to a return to specie payments, demand-

ed a tariff for revenue only, and called for thoroughgoing reform. The nominees of the convention were Samuel J. Tilden of New York, a "hard money" advocate, and Thomas A. Hendricks of Indiana. The story of the disputed election is told elsewhere (*see* ELECTORAL COMMISSION OF 1877). The popular vote showed a plurality for Tilden. The Democrats carried the South (except South Carolina, Florida, and Louisiana), the six border states, and Connecticut, New York, New Jersey and Indiana. In the Forty-fifth Congress (1877–79) the Republican majority in the Senate was reduced to two, but in the House the Democratic majority of 72 in the previous Congress was cut down to thirteen. The state government of Florida was Democratic, and the action of Hayes in withdrawing the remaining federal troops from South Carolina and Louisiana presently gave the party complete control of those states also. For the next generation the "solid South" could be counted upon to support any presidential candidate whom the Democrats might nominate, and to accept the platform upon which he stood. The battles of the party, accordingly, were hereafter to be waged in other states, and mainly on other issues than those due primarily to the Civil War.

Only one of the old issues, that of federal control of elections, did the Democrats keep to the front. Since the obnoxious election laws could not be repealed directly, the Democrats in the House, in the Forty-fifth Congress, endeavored to get rid of them by means of a "rider" on the army appropriation bill; but the Republican Senate refused to concur, and Congress adjourned without passing the bill. In the Forty-sixth Congress (1879–81) the Democrats had, at last, a majority in both branches, and the device of "riders" was again tried; but Hayes vetoed the bills, and the "riders" were withdrawn. Not until 1894, in the second administration of Cleveland, were the federal statutes relating to supervisors of elections, the use of deputy marshals at the polls, etc., repealed, although after 1877 they were largely a dead letter. Towards the prevention of another disputed presidential election no steps were taken during Hayes's term. On the question of silver (*see* SILVER COINAGE CONTROVERSY), now rapidly coming to prominence, neither party took a decided stand. A bill to repeal the resumption act (*see* FINANCIAL POLICY OF U. S.) passed the House, but failed in the Senate; while the Bland Silver Act of 1878 (*see* BLAND-ALLISON SILVER ACT), restoring the standard silver dollar to the list of coins and making it legal tender, was passed over the veto by large majorities in both houses. The Warner bill for the free coinage of silver, which passed the House in 1879, was not considered by the Senate, although both houses were Democratic. An ominous influence was the increased vitality of the Greenback party, with its opposition to national bank currency and its demand for the unlimited coinage of silver.

The Democratic national convention at Cincinnati, in 1880, had more than the usual wealth of "favorite sons" from which to choose. The Tammany opposition to Tilden in 1876, together with the declared purpose of that organization to oppose him if he ran again, led to the exclusion of the contesting Tammany delegation from the convention. The most significant plank in the platform was that which declared for "home rule; honest money, consisting of gold and silver, and paper convertible into coin on demand; the strict maintenance of the public faith, state and national; and a tariff for revenue only." Civil service reform, free ships, and restriction of Chinese immigration (*see* CHINESE IMMIGRATION)—the latter a Republican tenet also—were called for. The nominees were Winfield S. Hancock of Pennsylvania and William H. English of Indiana. In the campaign the Democrats savagely attacked the record of Garfield, the Republican nominee, to which the Republicans replied by charging the opposition with a purpose to ruin American industry by demanding free trade. The popular vote in November showed a plurality of less than 10,000 for Garfield. In Maine the electoral ticket was a fusion of Democrats and Greenbackers. In Virginia there were two tickets, those of the "regulars" and the "readjusters." The electoral vote was 155 for Hancock and 214 for Garfield. Outside of the South and the border states, all of which were Democratic, Hancock carried only New Jersey, Delaware, Nevada, and five of the six electoral votes of California. Only in Delaware and Nevada did he receive a majority of the popular vote.

The outlook for constructive legislation in the Forty-seventh Congress (1881–83) was not hopeful. At the beginning of the first extra session of the Senate, called in March to consider the President's nominations, the two parties tied. With the aid of the casting vote of the Vice-President, the Republicans tried to change the Senate employees; but the Democrats, by prolonging debate, fought the change until the resignation of Senators Conkling and Platt of New York, Republicans, gave them a majority and defeated the scheme. In the House the Republicans had a majority of one over the combined opposition. Two leading items of the Democratic platform, however, received consideration in the enactment, in 1883, of the civil service law and a revised tariff; but neither of these was strictly a party measure. There were encouraging signs, however, of another Democratic revival. The state elections of 1882 showed marked Democratic gains: a popular Republican governor met defeat in Pennsylvania, and Grover Cleveland, the Democratic candidate for governor of New York, defeated Folger, the administration can-

didate, by a majority of 190,000. In the Forty-eighth Congress (1883–85), although the Republicans controlled the Senate, the Democrats in the House had a majority of 75 over the combined opposition. Throughout the country, but particularly in the East, the growth of a powerful independent movement within the Republican ranks was favorable to Democratic success in the approaching presidential contest.

Cleveland; The Tariff; Silver (1884–1896).— The Democratic national convention at Chicago, in 1884, adopted a platform which, while vigorously denouncing almost every element of the Republican program in recent years, nevertheless showed some tendency to modify the strict construction attitude hitherto maintained. The tariff was to be revised "in a spirit of fairness to all interests," and with due regard to the need of revenue, the welfare of labor, and the rights of invested capital. The declaration that "the necessary reduction in taxation can and must be effected without depriving American labor of the ability to compete successfully with foreign labor, and without imposing lower rates of duty than will be ample to cover any increased cost of production which may exist in consequence of the higher rates of wages prevailing in this country," was a virtual approval of protection, and left the issue between the two great parties, at this point, one of degree rather than of principle. Save for a sop to "labor" in the form of a vague condemnation of corporations and monopolies, and a demand for "the repeal of all laws restricting the free action of labor," the remainder of the platform was unimportant. The nomination of Cleveland, who, in addition to wide support within his own party, was also the favorite of the Republican independents, had already been forecasted. The candidate for Vice-President was Thomas A. Hendricks of Indiana. The campaign was notorious for its offensive personal charges against Republican and Democratic candidates, the Burchard incident in New York (*see* RUM, ROMANISM AND REBELLION), the candidacy of Benjamin F. Butler, the Greenback and Anti-Monopoly candidate (*see* GREENBACK PARTY; GREENBACK LABOR PARTY), and the opposition of Tammany maintained until shortly before the election. The vote was close. Cleveland carried the South, including the border states, and Connecticut, New Jersey, and Indiana; his electoral vote being 219 against 182 for Blaine. Of the total popular vote he received a minority, and his plurality over Blaine was only about 60,000.

Not since Jackson had the Democrats possessed a leader of such conspicuous ability and moral force as Cleveland. That he was widely regarded as "better than his party," and owed his election appreciably to Republican support, was hardly to his advantage; but it remained to be seen whether or not he could raise his party to his own level, or get on harmoniously with the party organization and the horde of Democratic office-seekers. His first term witnessed a virtual reconstitution of the personnel of the civil service, but there was no "clean sweep." The presidential succession act of 1886 (*see* PRESIDENTIAL SUCCESSION) was passed by Democratic votes, and provision was at last made for regulating the electoral count (*see*). Numerous vetoes, especially of private pension bills, checked temporarily one of the greatest of Republican abuses.

The main issues, however, were the tariff and silver. Tariff reduction had been argued at length in the platform of 1884, but the treatment of the subject by both Republicans and Democrats in Congress was influenced more by a desire to dispose of a troublesome surplus than by sincere conviction regarding the evils of protection. The Morrison horizontal reduction bill of 1884 had shown a party cleavage, protectionist Democrats joining with Republicans to defeat the bill in the House. Cleveland's first annual message, in 1885, urged reduction of duties as a means of checking the surplus; but a bill to put wool and a few other articles on the free list was refused consideration by the House, 35 Democrats, led by Randall of Pennsylvania, voting with the Republicans against it. A more explicit message, in 1886, emphasizing the burdens of tariff taxation and urging the abolition of duties on raw materials and necessaries of life, again failed to win consideration in the House. Accordingly, Cleveland devoted his message in 1887 entirely to tariff and revenue reform. State elections in 1886 had reduced slightly the Democratic majority in the House, while in the Senate the Republicans had a bare majority. The Mills bill, providing substantial but not very consistent reductions in rates, passed the House in July, 1888, with only four opposing Democratic votes. Then came the presidential campaign and the election of a Republican President and Congress. The Senate, in December, substituted a tariff bill of its own in place of the Mills bill, and passed it in January, 1889, with the result that the Fiftieth Congress and Cleveland's first administration ended without action (*see* TARIFF POLICY).

The Democratic record with regard to silver was equally unsatisfactory. Both parties were in favor of "doing something for silver," though neither was ready for free coinage. Cleveland, who was strongly opposed to the Bland-Allison Act of 1878, warned Congress of the disastrous effect of a compulsory purchase law in the face of a decline in the market value of silver; but he could not influence the silver wing of his party, now rapidly gaining strength in the West. In 1886 the House rejected a free coinage bill, the

Democrats dividing, 96 in favor and 70 against. If the Republicans should eventually declare against free coinage, it seemed certain that the Democrats, if only for partisan reasons, would not be long in declaring for it (*see* SILVER COINAGE CONTROVERSY).

Cleveland's course, notable alike for inconsistency and good intention, satisfied neither the Democrats nor the Independents; but he could not be refused a renomination. The St. Louis platform of 1888 commended his "firm and prudent foreign policy" and honest adherence to civil service reform, and pledged the party, as in 1884, to tariff reduction with due regard to the interests of both labor and capital. A resolution endorsing the Mills bill, then pending in Congress, was adopted but not included in the platform. Cleveland was nominated without formal vote. The candidate for Vice-President was Allen G. Thurman of Ohio. But the issue of tariff reform, interpreted by the Republicans as only free trade in disguise, was fatal to the Democrats. Cleveland received the electoral vote of the South, but carried no other states except Connecticut and New Jersey. His popular vote showed a plurality, and a majority of 95,000 over Harrison. The Fifty-first Congress (1889–91) was safely Republican in both branches.

The Republican control was brief. Flagrant disregard of the civil service law, the arbitrary rulings and policy of Speaker Reed, and the sharp rise of prices following the McKinley tariff of 1890 (*see* MCKINLEY TARIFF ACT) made points for effective attack by the Democrats, and were skilfully utilized. In 1889 a number of state elections went Democratic, and in the Congressional elections of 1890 a Republican majority of 20 in the House gave place to a Democratic majority of 138. Instead of a general revision of the tariff, however, the new House contented itself with passing "pop-gun" bills, removing or lowering duties on particular articles, all of which failed in the Senate. A more effective popular argument was the denunciation of the tariff as the mother of trusts, for the suppression of which Congress legislated in 1890. The Sherman silver purchase act of 1890 (*see* SHERMAN SILVER ACT) was a Republican rather than a Democratic measure, but there was strong Democratic support for it, and twenty-three Democratic state conventions in that year had adopted resolutions favorable to silver. Subsequent bills to repeal the Sherman Act and to inaugurate free coinage received substantial Democratic aid.

Ex-President Cleveland's consistent opposition to silver had strengthened him with the conservative element of his party, now reinforced by considerable accessions of Independents; and his candidacy in 1892 was foreseen. An attempt of Governor Hill of New York to secure the New York delegation for himself, by calling an early state convention, was indignantly denounced by Cleveland's friends (*see* SNAPPERS). The national convention at Chicago, after a hard struggle, adopted a platform which denounced "Republican protection as a fraud," and demanded a tariff for revenue only. On the subject of silver the platform called for the use of both gold and silver, and the coinage of each without discrimination, subject to such legislation or international agreement as would maintain the parity of the two metals. The nominees were Cleveland and Adlai E. Stevenson of Illinois. The election was complicated by a split in the party in New York, by Democratic and Populist fusion tickets or alliances in Kansas, Colorado, North Dakota, Idaho, Wyoming, Oregon, Nevada and Minnesota, and by a return to the district system of choosing electors in Michigan. The Democratic victory was pronounced. Cleveland received 277 electoral votes against 145 for Harrison, included in his support being Illinois, Wisconsin, and California, and one or more electoral votes in Michigan, North Dakota, and Ohio. His plurality of the popular vote was 363,000. Both houses of the Fifty-third Congress (1893–95) were Democratic. For the first time since 1861 the executive and Congress were of the same party.

The diplomatic incidents of Cleveland's second administration—the withdrawal of the Hawaiian annexation treaty, intervention in Venezuela, and the Cuban insurrection—must be passed over here, since their influence upon party development was not great. The tariff and silver were still the overshadowing issues. For the moment the silver interests dominated both parties. Under the influence of the panic of 1893 the compulsory silver purchase clause of the Sherman Act was repealed, the Democratic vote being, as before, divided. The Wilson tariff bill, however, with its provision for free wool and an income tax, was so altered in the Senate that Cleveland allowed it to become law without his signature. The repeal of the federal election laws buried the remains of a dead issue. But the Democrats, weak in constructive power, were unable to cope with the widespread industrial disturbance, the disordered currency, the continued agitation for free silver, and the demand for naval expansion and a "vigorous foreign policy." The elections of 1894 swept them out of power in the states, and gave the House a Republican majority of 136 over all in the Fifty-fourth Congress (1895–97).

Bryan; Silver; Anti-Imperialism (1896–1908).—When the Democratic national convention met at Chicago, in 1896, the silver wing forced the adoption of a platform which demanded "the free and unlimited coinage of both silver and gold at the present legal ratio of sixteen to one, without waiting for the aid or consent of any other nation;" and nominated for President William J. Bryan

of Nebraska, whose brilliant oratory had aroused the convention to enthusiasm. The result was a revolt which sent out of the party thousands of members in all sections of the country, although in all parties the silver issue wrought dissension and revolution. The defeat of Bryan was overwhelming: his popular vote fell more than 500,000 behind that of McKinley, while of the 447 electoral votes he received only 176. On the other hand, Kansas and Nebraska went Democratic, and the Bryan majorities in South Carolina, Georgia, Alabama, Mississippi, Louisiana, Texas, and the mining states were unprecedented. The Fifty-fifth Congress (1897–99) was Republican, but with a free silver majority in the Senate and an anti-free coinage majority in the House.

The war with Spain, in 1898, overshadowed for a time all question of mere party policy. The proposed acquisition of the Philippines, however, raised the issue of imperialism (*see*). The Democrats were again divided: of the 57 votes for the ratification of the treaty of peace, 10 were Democratic; of the 27 against ratification, 22 were Democratic. The increased rates of the Dingley tariff, together with the internal taxes of the war revenue act, put an end to any thought of lower federal taxation, and the gold standard act of 1900 promised financial stability. No important change of party strength appeared in the membership of the Fifty-sixth Congress (1899–1901). The silver issue had not yet been laid, however, and the suppression of the Filipino insurrection, together with the delay in providing for civil government in the Philippines, gave the Democrats an opportunity to charge the Republicans with militarism and "executive usurpation." Had the Democrats been able to confine the presidental campaign of 1900 to the single issue of imperialism, they would have won the support of many conservative Republicans; but they could not. The national convention at Kansas City did, indeed, adopt a platform which declared imperialism to be "the paramount issue," denounced the Porto Rican tariff and the maintenance of United States troops in Cuba, and demanded "an immediate declaration of the nation's purpose" to give to the Filipinos a stable form of government, independence, and protection from outside interference; but the convention also denounced the gold standard act, demanded free coinage of silver, and renominated Bryan. As between imperialism and Bryanism, independent voters were disposed to regard the latter as the greater evil. As Bryan was also the nominee of the Populists, whose vice-presidential candidate, Towne, was not acceptable to many Democrats, fusion tickets were necessary in a number of states. Bryan's electoral vote was 155, against 292 for McKinley; a Democratic loss of 21 as compared with 1896. The popular vote for Bryan also declined.

For the next ten years the Democratic party was exclusively a party of opposition. It elected no President and, until 1911, controlled neither house of Congress. Its position as a minority party gave it no opportunity to embody its principles in positive legislation, nor was it strong enough, either in Congress or in the country, to extort material concessions from the Republicans. Although the course of the Republicans in the matter of silver had been far from creditable, that of the Democrats was worse because more definite; and the vagarious advocacy of "fiat" money and free coinage bred, in the business world, distrust of the ability of the party to deal with the grave economic problems which now pressed for solution. With many of the numerous proposals urged by President Roosevelt (1901–09) the Democrats naturally sympathized, but their party support was not sought. On the ratification of the treaty with Panama, in 1904, for the acquisition of the Isthmian Canal Zone, the Democrats in the Senate split, 14 voting for the treaty and 14 against it. The platform of the Democratic national convention at St. Louis, in 1904, dropped the currency issue, but denounced "executive usurpation" and the Republican policy in the Philippines, and demanded a tariff for revenue only. The nominees were Alton B. Parker of New York and Henry G. Davis of Virginia. The nomination of Parker was objectionable to the silver wing of the party, and the candidate made a poor impression in the campaign. The election gave Roosevelt the enormous popular majority of over 2,500,000, and 336 of the 476 electoral votes. In 1908 the Democrats at Denver once more nominated Bryan, attacked the administration for extravagance, called for tariff revision, and demanded a limitation of the power of the courts to issue injunctions, especially in labor controversies. The immense Republican majority of 1904 was cut down to about 470,000, but the electoral vote showed only 162 for Bryan against 321 for Taft.

Later Conditions (1908–1913).—If the Democrats themselves, however, could not control legislation, they could profit by the dissensions of their opponents. The conservatism and vacillation of President Taft in comparison with the energy, assertiveness and personal popularity of Roosevelt; the rise of prices and increased cost of living; the favoritism towards special interests, especially wool, in the Payne-Aldrich tariff of 1909; the elaborate program of naval construction; the widespread growth of socialistic ideas and political independence among the masses; the obvious widening of the breach between capital and labor; and the formation of an aggressive "insurgent" faction within the Republican ranks, all combined to prepare the way for a change (*see* PROGRESSIVES). The congressional elections of 1910 proved to be another Democratic landslide. The Sixty-first Congress (1909–11) had in the

Senate 32 Democrats and 60 Republicans, and in the House 172 Democrats and 219 Republicans. The Sixty-second Congress (1911–13) showed in the Senate 41 Democrats and 51 Republicans, and in the House 228 Democrats and 162 Republicans. Thirteen states in addition to the South had Democratic governors, included in the list being such former Republican strongholds as Maine, Connecticut, and Ohio, and the doubtful states of Massachusetts, New York, New Jersey, Indiana, Idaho, and Montana. Champ Clark of Missouri was elected Speaker of the House but the legislation of Congress was not such as to strengthen either party in popular favor. The Tariff Board was abolished; a "dollar-a-day" pension act, involving an estimated annual expenditure of $25,000,000, was passed; and American coastwise vessels were exempted from tolls on the Panama Canal. On the other hand, a constitutional amendment for the popular election of United States Senators was approved, the United States Steel Corporation and a number of other large industrial combinations underwent investigation, and the details of individual and corporate contributions to campaign funds in 1904 were brought to light. The Democratic National Convention of 1912 met at Baltimore, June 25. The leading candidates for the presidential nomination were Champ Clark, Speaker of the House of Representatives, and Woodrow Wilson, governor of New Jersey. On the forty-sixth ballot the influence of William J. Bryan (*see*) gave Wilson the necessary majority. The nominee for Vice-President was Thomas R. Marshall, governor of Indiana. The Republicans, who renominated William H. Taft (*see*), had no prospect of success, and the contest lay between Theodore Roosevelt (*see*), the Progressive candidate (*see* PROGRESSIVES), and Wilson. In the election Wilson received 435 electoral votes, against 88 for Roosevelt and 8 for Taft; but his popular vote was only 6,286,214 in a total of 15,031,169. The Sixty-Third Congress (1913–15) had an overwhelming Democratic majority in the House, while in the Senate the parties stood: Democrats, 51; Republicans, 44; and Progressive, 1. This Congress met in extra session on April 7, 1913; Champ Clark was re-elected Speaker of the House. The pledges of the party were redeemed by the enactment of the Underwood Tariff (*see*) and the introduction of extensive reforms in the banking and currency system (*see* RESERVE SYSTEM, FEDERAL).

See ANTI-IMPERIALISTS; ANTI-LECOMPTON DEMOCRATS; DEMOCRATIC-REBUBLICAN PARTY; GOLD DEMOCRATS; JACKSONIAN DEMOCRACY; PAPER MONEY; SLAVERY CONTROVERSY.

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WILLIAM MACDONALD.

DEMOCRATIC-REPUBLICAN PARTY (1792-1828)

Beginnings of Republican Opposition.—The Democratic-Republican party, like the Anti-Federalist party with which it is often confounded, originated in opposition. Anti-Federalism meant opposition to the adoption of the Federal Constitution; Republicanism implied opposition to the policies of the new government under the Constitution. It was the financial programme of the first Federalist administration and the ulterior aims of Alexander Hamilton (*see*), first Secretary of the Treasury, which aroused the doubts of those who were later known as Republicans. It was one thing to restore the public credit; it was

quite another to put money into the pockets of speculators and greedy capitalists. To provide for the payment of the public debt was a laudable aim, but to ask states which had already paid their debts to assume also the obligations of their less provident sisters was a severe strain on public altruism. Moreover, to invite men of wealth to subscribe for the stock of a national bank whose incorporation was an act of doubtful constitutionality, was to encourage, said Madison, "a mere scramble for so much public plunder." "Of all the shameful circumstances of this business," continued Madison in a letter to Jefferson, "it is among the greatest to see the members of the legislature who were most active in pushing this job openly grasping at its emoluments." When the Secretary of the Treasury intimated in his report on manufactures that Congress might promote the general welfare by appropriating money in any way it chose, Madison definitely parted company with his former collaborator, holding that by such an interpretation of the Constitution "the government is no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular restrictions." Jefferson had already expressed himself in a similar way, when Washington had asked his opinion on the constitutionality of the proposed national bank bill. The suspicions which the Secretary of State entertained of his brilliant colleague were deep-seated. Hamilton's well-known preference for the British constitution and his disposition to convert his secretaryship of the Treasury into a sort of chief ministerial office, confirmed Jefferson's distrust. Had he and Madison been alone in their suspicions, their misgivings would not be worth recording; but they voiced the sentiments of an increasing number of men who disliked the aristocratic tone of the new government and who believed that the group which had the President's ear were monarchists at heart.

Formation of the Republican Party.—Before the first Congress adjourned, the nucleus of a new party was at hand and its fundamental tenet roughly foreshadowed, namely: opposition to the increase of the powers of the Federal Government through the use of implied powers and at the expense of the state governments. The appearance of the first number of the *National Gazette* under the editorship of Philip Freneau was a sign that the further conduct of the administration would be subjected to searching criticism. The columns of the paper had much to say about "aristocratic juntos," "ministerial systems," and the control of the Government by a wealthy body of capitalists and public creditors whose interests were in opposition to those of the people. When Hamilton's paper, the *United States Gazette*, attempted to stigmatize the opposition as essentially Anti-Federalist, Freneau replied that only those men were true friends of the Union who adhered to a limited and republican form of government and who were ready to resist the efforts which had been made "to substitute, in the room of our equal republic, a baneful monarchy." By posing as the only staunch supporters of republicanism, the opposition secured a great tactical advantage. To call one's self emphatically a Republican was to cast aspersions upon the republicanism of one's opponents.

The decision of Washington to serve a second term in the presidency averted a contest for which, indeed, the Republicans were hardly prepared; yet, as Jefferson put it, "the occasion of electing a Vice-President was seized as a proper one for expressing the public sense on the doctrines of the monocrats." The Republicans supported George Clinton of New York who had been a pronounced Anti-Federalist. Yet Jefferson was careful to distinguish between Republicans "who wish to preserve the government in its present form" and those Anti-Federalists "who, though they dare not avow it, are opposed to any general government." The public sense, however, was more effectively expressed in the congressional elections which secured to the opposition the control of the next House. The party had not advanced beyond a negative program.

Extension of the Party.—American politics during the colonial period had been largely an affair of leaders. The basis of suffrage was narrow and the actual vote cast at elections always fell far below the potential vote. But in the social upheaval which accompanied the Revolution, the traditional control of the leaders was seriously impaired. The times were such as to call for new leaders or for a greater regard on the part of the old leaders for their followings. The movement took on various forms, but in nearly every state it had a sectional character, as in Massachusetts where the people of the interior, heavily taxed and in debt, resented the continued domination of the creditor and mercantile classes of the coastal region, and in South Carolina, where the small planters of the uplands united with the partisan class of Charleston against the large planters and merchants. "Our governments," wrote Izard to Jefferson in 1785, "tend too much to Democracy. A handicraftsman thinks an apprenticeship necessary to make him acquainted with his business. But our back countrymen are of the opinion that a politician may be born such, as well as a poet." The movement was similar to that which had led to the separation from the mother-country—the reaction of an individualistic and democratic society against the conservative control of an older and more aristocratic society. The ultimate triumph of the Republican party over its rival was due to the political sagacity of the leaders in so widening the basis of the party as to enlist the active support of the new democracy.

The beginnings of the French Revolution were followed in America with lively interest. Viewed through the roseate haze of distance, the French people seemed to be struggling for much the same liberties which American patriots had purchased with their blood. The excesses of the Jacobins were obscured by the exhilarating spectacle of a sovereign people in arms against the allied monarchs of Europe. It needed only the arrival of the French minister Genet to bring the latent Jacobinism of American Democrats to a white heat. In imitation of the famous Jacobin Club of Paris, "democratic clubs" were organized from Charleston to Portsmouth. These served the double purpose of bringing certain lesser politicians into prominence and of advancing the cause of local democracy by espousing the cause of French Jacobinism. Though Republicans had little sympathy with the eccentricities of dress and manner affected by American Jacobins, they tolerated the clubs and in many cases were forced to join them. The real or supposed connection of the democratic clubs with the agitations against the excise in western Pennsylvania brought into disrepute all these "self-created societies," as Washington wrathfully styled them. Their final disappearance, after the fall of Robespierre and the Jacobin party, freed the Republicans from a heavy incubus without severing the ties which bound them to their Democratic allies. Notwithstanding the bad odor now attached to the name Democrat, which in New England became synonymous with Jacobin or incendiary, Democratic-Republican eventually became the official appellation of the party, and the party continued to profess a warm attachment to France.

Throughout the Third and Fourth congresses, the Republicans maintained a persistent, if not always consistent, opposition to Federalist policies. Party contests assumed a particularly acrimonious character when the terms of the Jay Treaty (*see*) became public. The Democratic press assailed Washington in scurrilous fashion; but in the end public opinion sustained the administration and the treaty was ratified. The undisguised hostility of France to the Jay Treaty, however, was industriously used by the Republicans to discredit the Federalist administration in the elections of 1796. While the Federalists wrathfully resented French interference with domestic affairs, the Republicans with equal vehemence insisted that war with France would be the inevitable outcome if the party friendly to England should control the next administration. This first contest between the parties resulted, nevertheless, in the election of John Adams as President and of a Federalist Congress. The Republicans derived what comfort they could out of the election of Jefferson to the vice-presidency over Thomas Pinckney.

The Kentucky and Virginia Resolutions.—To the new Federalist administration fell the responsibility of dealing with the French Directory, which had promptly expressed its dislike for the new Government by refusing to receive its accredited minister, C. C. Pinckney. In his desire to preserve peace President Adams resolved to send special envoys to France. The failure of this mission and the subsequent revelations contained in the X Y Z (*see*) correspondence aroused such a storm of indignation against France as to efface for the moment all distinctions of party. Events seemed to conspire to give the Federalists an indefinite lease of power. As a French party, the Republicans were discredited. At this juncture, however, the Federalists threw away their advantage by passing the Alien and Sedition Acts (*see*) which enabled the Republicans to divert attention from foreign to domestic affairs. Though the congressional elections of 1798 brought accessions to the ranks of the Federalists, Jefferson and Madison sounded the note which was eventually to recall their scattered cohorts to the Republican standard. In November a set of resolutions drafted by Jefferson was adopted by the legislature of Kentucky; and in December another series written by Madison passed the Virginia legislature. Both sets of resolutions protested against the Alien and Sedition laws as palpable and dangerous infractions of the Constitution. With "nullification" (*see*) and "interposition" (*see*) as remedies for such violations of the federal compact, the authors were not greatly concerned. What they aimed at was such an affirmation of principles as should rally their followers and arrest the usurpation of power by their opponents. It was no part of Jefferson's plan to apply the ultimate remedy: he was content "to leave the matter in such a train as that we may not be committed absolutely to push the matter to extremities, and yet may be free to push as far as events will render prudent." The fundamental position assumed in these resolutions is that the Federal Government is one of limited powers and that citizens must look to their state governments as bulwarks of their individual liberties, whenever the express terms of the federal compact are violated. The Federal Government, in short, was not to be the final judge of its own powers. By recalling the party to its original position of opposition to the consolidating tendencies of federalism, the resolutions of 1798 served the purposes of a modern platform. In this light their ambiguities are not greater nor their political theories more vague than those of later platforms (*see* VIRGINIA AND KENTUCKY RESOLUTIONS).

Revolution of 1800.—Among the factors which contributed to the success of the Republican candidates in the presidential election of 1800, may be mentioned the natural reaction against the militant federalism of

1798–99, the imprudent prosecutions by the Government under the Sedition Law, and the dissensions among Federalist leaders. Yet the Republican party owed quite as much to superior organization and leadership. The success of Charles Pinckney in building up an effective party organization in South Carolina was equalled only by the adroit labors of Aaron Burr in the state and city of New York. The triumph of the Republican party can hardly be ascribed to its advocacy of constructive policies, though in after years Jefferson declared that the political overturn of 1800 was "as real a revolution in the principles of our government as that of 1776 was in its form." In his inaugural address, as well as in his first annual message to Congress, Jefferson studiously avoided recommending positive and radical policies, partly because he wished first to reconcile the Federalists to a Republican administration and partly because he sincerely wished to abate the influence of the executive over the legislative branch of the Government. So far as his message formulated a policy, it might be summed up in the phrase "administrative economy." "The republic which Jefferson believed himself to be founding or securing in 1801," writes Mr. Henry Adams, "was an enlarged Virginia—a society to be kept pure and free by the absence of complicated interests, by the encouragement of agriculture and of commerce as its handmaid, but not of industry in a larger sense." This was essentially the viewpoint of Virginia Republicans and of southern Republicans generally.

First Republican Administration.—Two notable economies were effected under the leadership of Albert Gallatin, the new Secretary of the Treasury: internal taxes were abolished, and therewith fully one-half of the offices in the gift of the President; and provision was made for the extinguishment of the public debt within sixteen years. These economies were to be effected by reductions in appropriations for other branches of the public service, notably in the Army and Navy, for Jefferson was the avowed enemy of war. The Republicans in Congress hardly needed the incentive of the President's message to repeal the obnoxious judiciary act passed in the last hours of the preceding Congress. The Alien and Sedition laws were suffered to expire by limitation, and a five years' residence before naturalization was reëstablished, instead of the requirement of fourteen years imposed by the Federalists.

The signal achievement of Jefferson's first administration was the purchase of the province of Louisiana, though that diplomatic triumph was secured at the cost of strict-construction principles. Believing that the Constitution did not warrant the acquisition of territory, Jefferson was at first inclined to urge an amendment to the Constitution; but his party associates now evinced a singular callousness to constitutional scruples. Not only was the treaty ratified, but a government was set up in the territory of Orleans (*see*) which had not a vestige of popular control. In the debates on the acquisition and government of Louisiana, the parties changed sides. The Republicans became latitudinarians, while the Federalists borrowed arguments from the strict-constructionist school. Notwithstanding the inconsistencies of the party in power, its governance was undeniably popular. The western communities were unanimous in their approval of a policy which gave them unrestricted use of the Mississippi River. The admission of Ohio strengthened the forces of the administration. Only the defection of Burr, who attempted to win the governorship of New York with the connivance of Federalists, and minor differences in Pennsylvania, disturbed the harmony of the party. The defeat of Burr by the union of his enemies, the Livingstons and the Clintons, and the subsequent reëlection of Jefferson with George Clinton (*see*) as Vice-President, cemented the alliance between the Republicans of Virginia and New York. The dissentions in Pennsylvania did not prevent the Republicans from carrying the state in the election of 1804. The Federalist candidates received only the electoral votes of Connecticut and Delaware, and two votes in Maryland. Even in Massachusetts, a majority of the popular votes was cast for Jefferson. He might be pardoned for writing exultantly to Volney, "The two parties which prevailed with so much violence when you were here are almost wholly melted into one."

Jeffersonian Policy of Peaceable Coercion.—The second Republican like the second Federalist administration had to face a series of vexing problems arising from continuance of war in Europe. Neither of the great contestants cared for the rights of neutrals. Great Britain added to her other offences the impressment of American seamen and the blockade of American ports. Much against his will Jefferson had to acquiesce in the resuscitation of the American Navy, though his gun-boat system was ludicrously inadequate. The weapon upon which he relied to bring foreign powers to terms was not a navy but peaceable coercion. "Our commerce," was his theory, "is so valuable to them, that they will be glad to purchase it, when the only price we ask is to do us justice. I believe we have in our own hands the means of peaceable coercion." This policy was put to a practical test by the passage of the Embargo Act (*see*) of 1807. It was speedily found that the success of peaceable coercion depended largely on the animus of American merchants and shippers. Congress had to resort to enforcement acts and to lodge in the President's hands a discretionary power which contrasted strangely with earlier Republican doctrines. The embargo was defended

as the alternative to war; but its enforcement required, eventually, large appropriations for both the Army and the Navy. How far Jefferson had advanced beyond his conception of a general government as "a very simple organization and a very unexpensive one," was indicated by his message of 1808. Would it not be wise, he queried, to appropriate the surplus revenue to the improvement of roads, canals, rivers, education, and "other great foundations of prosperity and union?"

Republican Schism.—The tendency of the administration to depart from a strict construction of the powers conferred upon the Federal Government, alarmed old-line Virginia Republicans. Their scruples were voiced in Congress by the eccentric John Randolph (*see*). Always a sharp critic of the administration, he had, since 1805, been in factious opposition. His followers, popularly known as "Quids" (*see*), more than once combined with the Federalists to embarrass the administration. As the presidential election of 1808 approached, these elements of opposition united on James Monroe (*see*) as their candidate. Jefferson made no secret of his preference for Madison. Even when the congressional caucus pronounced in favor of Madison, the malcontents would not suffer Monroe to withdraw from the canvass. Meantime, the Republicans of New York showed a disposition to prefer George Clinton (*see*) to Madison. So desperate was the situation, thinks Henry Adams, that only the failure of the opposition to concentrate upon either Monroe or Clinton and the unwillingness of DeWitt Clinton to strike an alliance with the Federalists in behalf of his uncle, saved Madison from defeat. The electoral vote of 1808 hardly measures the reaction against Republican policies. The congressional elections point to a wide-spread revolt against the embargo policy.

The New Republicanism.—The retirement of Jefferson, humiliated by the repeal of the embargo, left the party without vigorous leadership or a definite foreign policy. Madison had stood by the policy of peaceable coercion to the bitter end. When it failed, he had nothing but an ineffectual non-intercourse policy to offer. His first term was distinguished only by executive weakness and legislative impotence until the advent of the Twelfth Congress. The elections of 1810 brought into the House of Representatives a group of young men from the South and West, who, though calling themselves Republicans, cared little for the traditional doctrines of the party. They represented the growing national spirit, which, wearied with diplomatic shifts, desired vigorous action to uphold the national honor. Their voice was for war; and in spite of the reluctance of Republicans of the Virginia school to break with the traditions of 1798, war was declared against Great Britain as the chief aggressor. Of this war—"Mr. Madison's War"—the presidential election of 1812 was an episode. Opposed to Madison's reëlection were his old Virginia antagonists, those New York Democrats who followed the fortunes of DeWitt Clinton (*see*), and in general all who believed that his defeat would restore peace. The malcontents and the Federalists of New England united upon Clinton, who received the vote of all the New England states but Vermont, as well as the electoral votes of New York, New Jersey, and Delaware. Madison was supported by the South and West, but without the vote of Pennsylvania he would have been defeated.

Though the Republican Party deserved little credit for the conduct of the war, it was retained in power at its close. Two circumstances insured Republican control: the collapse of the Federalist party and the abandonment of the dogma of strict construction by the new leaders. The election of James Monroe was hardly contested outside of Massachusetts, Connecticut and Delaware. So completely did the Republicans break with the past that in 1816 they established a new national bank and justified their course unblushingly by arguments borrowed from Alexander Hamilton. In the same year, the party put the stamp of its approval on a tariff bill designed to offer protection to new industries. Only the President's veto prevented an appropriation for internal improvements. In short, the Republican party seemed about to pass over to the Federalist position bodily. There never was a time when Jefferson's saying was so nearly true—"we are all Republicans, we are all Federalists." In 1820 Monroe was reëlected without opposition.

The Era of Good Feeling.—As a description of politics during Monroe's presidency, the phrase "Era of Good Feeling" (*see*) is misleading. On the surface there appeared to be but one national party. Beneath this superficial calm were sharp sectional and bitter factional differences. In 1820, the contest over slavery in Missouri threatened to divide the Republican party along sectional lines. The old alliance between Virginia and Pennsylvania was, for the moment, dissolved. The vote on the tariff bill of 1824, too, suggested a similar alignment. But these sectional differences were not yet so sharp as to divide the party permanently. The factional rivalries were more menacing to the integrity of the party. The inability of President Monroe to conceive and carry through a definite policy left his administration the sport of factions. Within his Cabinet he could not impose peace upon Crawford (*see*) and Calhoun (*see*), who were intriguing for the support of the South in the approaching campaign. Outside the President's official family, Clay (*see*) of Kentucky, Jackson (*see*) of Tennessee, and J. Q. Adams (*see*) of Massachusetts, were trying to win a national following. Before the end of Monroe's

first term, Adams observed that preparations were making "not for the next Presidential election, but for the one after." All the candidates professed Republican doctrines, but as to what was now orthodox Republicanism, opinions differed. Jefferson, remembering Adam's early affiliations, thought him not better than a Federalist, while Crawford was "a Republican of the old school." Yet Crawford had voted against the embargo and had supported the plan to re-charter the national bank.

The Split in the Party.—The surprising fact revealed by the presidential vote of 1824 was the strength of the Jackson following, particuuarly in the democratic West. Jackson, indeed, received the highest number of electoral votes, though not the majority necessary for an election. The subsequent election by the House, of Adams who stood second on the list, had momentous consequences. The disappointed followers of Jackson declared that the will of the people had been defeated. When Clay, whose influence had been exerted in behalf of Adams, was given the chief post in the new Cabinet, Jackson himself joined in the cry of "corrupt-bargain." Jackson was at once renominated by his own state, and the administration of Adams became virtually a prolonged campaign for the presidency. In Congress every opportunity was seized to unite the Jackson, Crawford and Calhoun forces into a party. Though President Adams avowed bold doctrines of loose construction, the opposition was too little united on principle to take issue with him on this ground. The election of 1828 involved men rather than measures. The Jackson following demanded his vindication and that of the sovereign people whose will had been defeated four years before. Against the gathering forces of the new democracy Adams made no headway. The triumphant election of Jackson and his subsequent policy opened wide the breach in the ranks of the Democratic-Republican party. Out of the welter of factional conflict emerged eventually two parties—the National Republican (*see*) which accepted Clay's leadership, and the Democratic party (*see*) whose purposes and aspirations were embodied in Andrew Jackson.

See DEMOCRATIC PARTY; FEDERALIST PARTY; NATIONAL REPUBLICAN PARTY.

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ALLEN JOHNSON.

DEMOGRAPHY. See VITAL STATISTICS.

DEMOS KRATEO PRINCIPLE. A name applied by Thomas H. Benton (*see*) to the principle advocated by him after the presidential election of 1824 that the House of Representatives, in selecting a President, should simply carry out the "will of the people" as indicated by the plurality vote. The same doctrine had been advocated previously in 1801.

O. C. H.

DEPARTMENTS. See following departments by name: AGRICULTURE; COMMERCE; COMMERCE AND LABOR; INTERIOR; JUSTICE; LABOR; NAVY; POST OFFICE; STATE; TREASURY; WAR.

DEPARTMENTS, HEADS OF. See CABINET OF THE PRESIDENT; EXECUTIVE DEPARTMENTS; EXECUTIVE AND EXECUTIVE REFORM; lists of Secretaries by names of departments.

DEPENDENCIES OF THE UNITED STATES

Definition.—The term dependency is not an official designation, but is popularly used to refer to a country, usually remote, which is under the sovereignty of another yet not a constituent part of it. The important American dependencies are the Philippines, Porto Rico, Guam, Tutuila, and, according to some authorities, Alaska and Hawaii.

Forms of Government.—The systems of administration in the various dependencies are, in general outline, merely developments of those established for the earliest American territories. The Ordinance of 1787 (*see*) provided for the Northwest Territory (*see*), at first, a governor, secretary and three judges, all appointed, who exercised almost unlimited powers; and later a governor and legislature, one house elected and one appointed.

Louisiana.—After Louisiana (*see*) had been purchased, Congress voted that all of the powers previously exercised by the Spanish officials should be temporarily vested in the President. Louisiana passed through three distinct stages of government, established in succession by Congress: (1) this theoretical absolutism under the President; (2) an administration

under a governor and a legislative council of thirteen, all appointed; (3) a regular territorial government modeled after the second form provided for the Northwest Territory.

Florida (*see*) passed through the same three stages as Louisiana.

California and New Mexico (*see*) were at first under the military administration of the President, which continued for nearly two years after the conclusion of peace. During this time civil government was established; laws made and enforced; taxes levied and collected—all by military authority, on the theory that military control continued till Congress took action.

Alaska (*see*) for sixteen years was administered as a collection district in which such laws of Washington Territory, as were applicable, were applied. In 1884 Congress provided that it should have a governor with general powers of administration. Until 1912 it remained an unorganized territory; its inhabitants had no part in its general government; but in August of that year Congress granted an elective legislative assembly of two houses. Alaska, however, has no definite promise of eventual statehood, although the Supreme Court has declared that it is an integral part of the United States, and that the provisions of the Constitution are applicable within it.

Hawaii.—The joint resolution annexing Hawaii (*see*) provided, in almost the same words used for Louisiana, that the existing powers of the Hawaiian Government should be temporarily vested in the President. Two years later, 1900, Congress made Hawaii a fully organized territory, with a governor appointed by the President and a two-chambered legislature elected by the people. It extended to Hawaii the Constitution and laws of the United States, and conferred citizenship on all citizens of the Hawaiian republic. Hawaii is, then, like Alaska, a constituent part of the United States and, in that sense, is not a dependency. The only reason for regarding it as such is that, like Alaska, it has no assurance of statehood.

Porto Rico (*see*) was governed for eighteen months by the war power of the President. The military authorities established a civil administration, made laws and levied taxes, as was done in New Mexico and California. This military rule continued until Congress passed the Foraker Act, in 1900, which created a complete system of government, including a governor, an upper house or council appointed by the President, and a lower house elected by the voters of Porto Rico. In general this was merely a repetition of the familiar second form of territorial government established by the Ordinance of 1787. The council, however, had new features; it was composed of six Americans who were executive heads of the administration and five Porto Ricans, thus giving the Federal Government ultimate control. Local municipal government is entirely in the hands of the Porto Ricans, subject to a strict supervision by the American insular authorities.

The Philippines (*see*) have passed through the familiar stages of government: (1) a military rule; (2) a civil administration under the President; (3) a complete government outlined by Congress. Each of these stages, however, had interesting modifications. Under the military rule the Army officers exercised civil functions, as the insurrection was gradually suppressed. Early in 1899 the President, under his military power, appointed the first Philippine Commission, to report upon the form of government best fitted for the islands. The commission recommended the system adopted for Louisiana. Accordingly the President, still under his war powers, appointed the second Philippine Commission, 1900, and entrusted to it the legislative and many of the executive functions up to that time exercised by the Army officers. The Supreme Court in the Insular Cases (*see*) held that the military power based on conquest did not continue after a formal treaty of peace.

Congress, therefore, voted, 1901, that all authority necessary to govern the Philippines should be temporarily vested in the President; this changed the government from a military to a civil basis. The President directed that the commission should now be composed of a governor, four Americans at the head of four executive departments, and four Filipinos; and that it should have full authority in all provinces which had been pacified. Congress passed an organic act, 1902, providing that in addition to the existing administration there should shortly be an elected assembly. The Filipinos fill practically all of the 12,000 town and village offices, a large majority of the others, and all of the seats in the assembly.

Those provinces inhabited by the Moro and Pagan tribes have a separate organization under the sole control of the governor-general and the Philippine Commission.

Guam and Tutuila (*see*) have never been given any form of government by Congress; but by executive order have been placed under the jurisdiction of the Navy Department, which has appointed the commandants of the naval stations to be governors of the islands. They organize the administration, levy taxes, make laws, and in general have practically absolute authority. For the smaller insular possessions Midway (*see*), Howland (*see*), Baker's (*see*), and the Guano Islands (*see*), no civil or military government has been provided. The law of the Guano Islands is the same as that of merchant ships at sea.

Application of Federal Revenue Laws.—After California had been conquered, but before it had legally passed by treaty, the American war governor levied customs duties by the military authority of the President. These continued to be collected until the governor received news

of the treaty of peace, after which he put into operation the regular United States tariff, which remained in force for some months before Congress expressly extended its revenue laws over the district. The Supreme Court decided (Cross *vs.* Harrison, 16 *How* 164) that the duties collected after the treaty of peace and before the act of Congress, were legal (*see* DE FACTO GOVERNMENT).

After Alaska was ceded, the customs authorities at once admitted its exports into the United States free of duty; yet the revenue laws of the United States were not extended to the territory for nearly a year.

The joint resolution annexing Hawaii, in 1898, stated that until Congress should legislate in the matter, the existing customs regulations between Hawaii and the United States and other countries should remain unchanged. The Supreme Court however decided (Crossman *vs.* U. S., 105 *Fed.* 608) that after annexation Hawaii was not foreign territory and that the regular tariff duties could not be collected upon goods imported from the islands. The Organic Act of 1900 extended to Hawaii both the customs and internal revenue laws of the United States, the proceeds from which are paid into the United States Treasury.

In Porto Rico the military authorities levied a war tariff which continued after peace was made and until the Organic Act, 1900, when Congress extended the United States tariff laws to the island. The Supreme Court decided in the Insular Cases that after the treaty of cession no duty could be levied upon goods carried between Porto Rico or the Philippines and the rest of the United States, except by special act of Congress. For a few months Congress instituted a low tariff between the United States and Porto Rico, but complete free trade was inaugurated in 1901. The tariff duties collected in Porto Rico are not paid into the United States Treasury, as in the case of fully incorporated territories, but into the treasury of Porto Rico. The island is also permitted to levy its own internal revenue and to retain the proceeds.

In the Philippines the military government at first continued the existing Spanish tariff. Later the Philippine Commission, 1901, enacted a new schedule of duties, which Congress ratified, 1902; but provided that imports into the United States should pay seventy-five per cent of the United States tariff rates. Finally Congress instituted, August 5, 1909, a distinct tariff system for the Philippines, with the stipulation that between the United States and the islands there should be free trade (with minor limitations in regard to rice, sugar and tobacco). The duties collected under the Philippine tariff, both in the ports of the Philippines and in those of the United States, and the income from the distinct internal revenue system of the islands, are all turned into the Philippine treasury.

Guam and Tutuila have separate tariff dues and internal revenues, both levied by the sole authority of the President, the proceeds of which go into the island treasuries.

Federal Control.—The United States maintains full control over its dependencies. The President appoints the leading executive officials who, in turn, are free from financial restraint by the native legislative bodies; for, by act of Congress, if these fail to pass the necessary supply bills, then the sums voted the previous year are deemed to be legally appropriated.

Congress has practically unrestricted rights of legislation, subject only to the fundamental limitations of the Constitution, such as the provision forbidding it to pass bills of attainder (Art. I, Sec. ix, ¶ 3). It can withdraw or modify the organic laws of Porto Rico and the Philippines, since they are not yet a part of the United States, and can pass any ordinary legislation for any of the dependencies at any time.

To keep in touch with Porto Rico and the Philippines, the government organized the Bureau of Insular Affairs (*see*), but this has no jurisdiction over Hawaii, Alaska, Guam or Tutuila. Delegates or commissioners represent Hawaii, Alaska, Porto Rico and the Philippines in Washington. But in general Alaska, Guam and Tutuila have been neglected by the United States.

General Policy.—The general policy of the United States towards its territories and dependencies has been clear and consistent from the earliest days. The main features are: (1) to give to each new acquisition a form of government best suited to the political ability or the number of its inhabitants; (2) to prepare these inhabitants by education and by increasing participation in public affairs for complete local self-government.

Jefferson urged that there should be an appointed legislature in early Louisiana on the ground that "our new fellow-citizens are as yet as incapable of self-government as children;" yet he promised in the treaty of annexation that they should eventually have full statehood. Similarly the Philippine Commission stated in one of its first reports that even the educated Filipinos had "but a faint conception of what real civil liberty is," but that "the general theory upon which the Commission is proceeding" is that "we can gradually teach them the method of carrying on government according to American ideas."

This policy of political education has been applied to the recent insular possessions. After two years Porto Rico was given a government practically the same as the most advanced form prescribed for the Northwest Territory; and in 1910 the Secretary of War recommended that the inhabitants of the island be given a still larger share in its administration. This same policy is shown in the Philippines. At

first the legislative power was exercised solely by the council composed of a majority of Americans; at present (1914) it is shared equally with the elected Filipino assembly. In the beginning the provinces were administered by appointed officials, a majority of whom were Americans; now the majority are Filipinos, elected by popular vote. In 1913 the Filipinos were given a majority in the Philippine Commission. The Philippine school system has for one of its aims the preparation of the coming generation for full political rights.

See ANNEXATIONS TO THE UNITED STATES; COLONIZATION BY GREAT BRITAIN IN AMERICA; COALING STATIONS; HAWAII, ANNEXATION OF; PACIFIC ISLANDS; PHILIPPINE ISLANDS; PORTO RICO; TERRITORY, ACQUIRED, STATUS OF; TERRITORY, CONSTITUTIONAL QUESTIONS OF.

References: W. F. Willoughby, *Territories and Dependeneies of the U. S.* (1905), bibliography of sources in Appendix; Philippine Commission, *Annual Reports* (1900–1913); Governor of Porto Rico, *Annual Reports* 1901–1913; Secretary of War, *Annual Reports;* D. S. Jordan, *Imperial Democracy* (1899), chs. i–iv–vii; A. H. Howe, "Insular Cases" in *House Exec. Docs.*, 56 Con., 2 Sess., 509; A. C. Coolidge, *United States as a World Power* (1907), ch. vii; bibliography, Library of Congress, *List of Books with Reference to Periodicals Relating to the Theory of Colonization, Government of Dependencies, Protectorates and Related Topics* (2d ed., 1900); A. B. Hart, *Manual* (1908), § 168; A. L. Lowell, "Colonial Expansion in the U. S." in *Atlantic Monthly*, LXXXIII (1901), 145; C. A. Gardiner, *Our Right to Acquire and Hold Foreign Territory* (1899); C. E. Magoon, *Report on the Legal Status of Territory Acquired by the U. S. during the War with Spain* (1900); *Am. Year Book, 1910,* and year by year.

GEORGE H. BLAKESLEE.

DEPENDENT PEOPLE. The population of the United States includes: (1) citizens, born or naturalized; (2) aliens; (3) a variety of persons who have not a full legal status, but are subject to the jurisdiction of the United States. The negroes during and for some time after the Civil War were practically the dependents of the Federal Government (*see* FREEDMAN'S BUREAU). The Indians who have not abandoned their tribe and accepted citizenship, are in a status described by Chief Justice Marshall as that of "domestic dependent nations." An exception is that of the Zuni and other tribes who were made citizens by the annexation treaty of 1848. The people of the Hawaiian Islands were all subject to the general laws of Congress until April 30, 1900, when they were declared citizens of the United States. The people of Porto Rico and of the Philippine Islands and of the small Asiatic islands are not legally citizens of the United States, and therefore not entitled to the privileges of citizens enumerated in the Federal Constitution. Congress, may, however, by statute bestow citizenship upon Porto Rico, or the Philippines, or any other body of previously dependent people. See BILLS OF RIGHTS; DEPENDENCIES OF THE UNITED STATES; INDIAN POLICY OF THE UNITED STATES; MILITARY OCCUPATION; TERRITORY, ACQUIRED, STATUS OF; WARDS OF THE NATION. **References:** A. C. Beardsly, *Am. Government and Politics* (1910), ch. xxi; W. F. Willoughby, *Territories and Dependencies of the U. S.* (1905); A. B. Hart, *National Ideals* (1907), ch. iv, *Actual Government* (rev. ed., 1908), § 15.

A. B. H.

DEPENDENT STATES AND UNITIES HAVING QUALIFIED STATUS. The international status of a political unity may be qualified or limited by its relations to states in the family of nations. In the states not members of the family of nations, citizens of states which are members of the family of nations, are often granted special exemptions from jurisdiction (*see* EXTRATERRITORIALITY). Some of the Asiatic states are not yet fully admitted to the international family, though invited to certain conferences.

Certain states, recognized members of the family of nations, are by international agreement restricted in their action; for example, neutralized states, bound to abstain from offensive hostilities.

The status of other political unities which for internal affairs may have full competence may be limited in international affairs. "Personal unions" sometimes exist in cases where the unities are politically distinct but are under a single head for international affairs, as in the Netherlands and Luxemburg till 1890. When such states have only a single international personality, as in the case of Sweden and Norway from 1815 to 1905, the union is called a "real union."

In a confederation, the status of the unities confederated may be determined by the basis of union, and the degree of dependence upon the new international personality of the confederation is usually stated in the fundamental law, as in the German Confederation from 1815 to 1866. In a federation the federal government usually becomes the sole international person regardless of the degree of power retained by the federal units.

Protected states distinctly become dependent upon the protecting state or states and may retain only a small degree of autonomy. The less highly civilized states tend to lose their autonomy and to become entirely absorbed by the protector, while in certain of the more highly civilized states the political divisions tend to obtain more and more control of their foreign relations, as in case of Canada in commercial matters. In general, protected states possess all the powers they have not

resigned, while states under a suzerain possess such powers as have been conferred upon them.

In certain states not fully admitted to the family of nations the great powers have claimed "spheres of influence," etc., with the idea of consequently gaining a more definite control, if circumstances favor.

Some of the great trading companies, as the East India Company of earlier days and the more recent African companies, have assumed many state functions, though strictly creations of the European states.

The agreement between Great Britain and Japan of August 21, 1905, is for the protection of their spheres of interest in Asia.

The United States, for specified purposes, exercises over Cuba a quasi-protectorate, and it has been officially stated regards itself as the "next friend" of Liberia.

Complete domestic autonomy may be entirely consistent with the absence of any right to conduct international negotiations.

Many states which had not full status according to international law, or whose dependence was in some degree qualified were admitted to full participation in the Hague Conferences of 1899 and 1907 (*see* STATES, EQUALITY OF); indeed, with the growing complexity of international relations it is not easy to find that entire independence which was a postulate of early writers upon international law.

See CUBA AND CUBAN DIPLOMACY; DEPENDENCIES OF THE U. S.; FEDERAL STATE; INTERNATIONAL CONGRESSES AND CONFERENCES; LIBERIA; PANAMA, REPUBLIC OF; RECOGNITION OF NEW STATES; STATE, THEORY OF; TERRITORIES OF THE UNITED STATES; TERRITORY, ACQUIRED, STATUS OF.

References: L. Oppenheim, *Int. Law* (1912), I, 132 *et seq.*; J. Westlake, *Int. Law* (1904), I, ch. 3; bibliography in Library of Congress, *List Relating to the Theory of Colonization, Government, of Dependencies, Protectorates and Related Topics* (2d ed., 1900); bibliography in A. B. Hart, *Manual* (1908), § 194.

GEORGE G. WILSON.

DEPOSIT OF PUBLIC FUNDS. Early Deposits.—The funds of the Federal Government as they accrued were deposited in the United States Bank from 1791 to 1811 and from 1816 to 1833; in local state banks from 1811 to 1816, and from 1833 to 1840 after Jackson's removal of the deposits (*see*). In 1840 the sub-treasury act directed that all balances be kept by public officials. From the repeal of this act in 1841 to its substantial reënactment in 1846 a return was made in the use of state banks which gave security. After 1846 all public funds were held by the Government officials, for the most part in the Treasury and sub-treasuries.

National Bank Depositories.—The banking act of 1863 permitted national banks to be depositories of Government receipts, exclusive of customs; but by an amendment in 1864 a depository bank must pledge collateral in the form of Government bonds in order to secure the deposit. In 1866 disbursing officers were authorized to deposit in national banks in places where there was no sub-treasury. Secretaries of the Treasury hesitated to make large deposits in banks; public sentiment influenced by the greenback and silver agitation was hostile to any more intimate relationship between the Government and banks. A succession of surpluses after 1880 led to a large accumulation of funds in the Treasury, and deposits in banks of a part of the balance were increased. The amount which an individual bank could hold was raised from $500,000 to $1,000,000, and some relaxation was made in the valuation of securities demanded in pledge. The Republicans reversed this policy in 1889, on the ground that it created favoritism, gave a dangerous power over the currency to the Secretary of the Treasury, and that it was unprofitable to grant to banks the use of money without interest.

Recent Practice.—With the reduction in reserves after 1890 the question became of less importance, but by 1908 the Treasury balance again became excessive, and deposits were freely made. In 1903 Secretary Shaw, as a part of his policy of relieving the needs of the money market by Treasury aid, increased the deposits to $140,000,000. In order to accomplish this the more easily, certain state and municipal bonds were declared acceptable for collateral; and in 1904 railroad bonds were added. There was question as to the legality of this administrative procedure, but this doubt was removed by the Aldrich-Vreeland Act of 1907, which also provided that deposits be distributed as equitably as possible between the different states and sections of the country. May 30, 1908, Congress ordered that banks pay at least one per cent interest on deposits. The following table shows the number of depository banks and their Treasury deposits at different dates:

	Number of Depository Banks	Deposits
1865	330	$ 36,000,000
1870	148	8,000,000
1875	145	11,000,000
1880	131	12,000,000
1885	132	13,000,000
1890	205	37,000,000
1900	442	111,000,000
1905	837	102,000,000
1910	1,380	41,000,000

State and Municipal Deposits.—In sharp contrast with the strict provisions enforced in the deposit of federal funds, is the loose practice of states and cities. Legislation is irregular and incomplete. Sometimes deposits are limited to banks within the state; preference may be given to banks that will allow interest or the highest rate of interest. The location of depositories is sometimes limited, as in New

York to New York City and Albany. The amount which can be deposited in any one bank may also be limited. Security is often required, as by requiring the banks to give bond. Deposits are frequently made in banks at the discretion of fiscal officials without the protection of collateral; and often the selection of depositories is regarded as an element of party spoils. In many instances the Treasury official claims as his personal perquisite the interest demanded of the bank for the favor of the deposit. A frequent result has been scandal and loss of funds through failures of banks; and cases have been known where public employees could not get their salaries because the funds were locked up in deposits paying interest to a state treasurer.

See Banks and Banking Acts, National; Checks and Drafts; Independent Treasury; Sub-Treasury; Treasury Department.

References: J. B. Phillips, "Methods of Keeping the Public Money of the U. S." in Mich. Pol. Sci. Assoc., *Publications*, IV (1900), No. 3; D. R. Dewey, *Financial Hist. of the U. S.* (1903), 235–239, 252–256, 417–418, 492–494; D. Kinley, *Independent Treasury System;* (issued in rev. ed. by National Monetary Commission, 1910); U. S. Secy. of the Treasury, *Annual Report,* 1910, 138–139.

Davis R. Dewey.

DEPUTIES, LEGAL AUTHORITY OF. The general principle of public law is that no one can designate another person to perform his duties except under authority of a law giving such authority. By such express authority from colonial times it has been customary for many executive officials to have a subordinate officer or assistant called a deputy (*see* Deputy Governor). The phrase is commonly applied, nowadays, to deputy marshals and deputy sheriffs, who are usually appointed by the head of their office under a statute. In times of riot or disturbance, people are often sworn in as deputy sheriffs, or deputy constables which gives them the authority of constable or policeman. See Coercion of Individuals; Order, Maintenance of; Riots; Sheriff. References: *Am. and Eng. Encyc. of Law* (1887–1892), V, 623-630. A. B. H.

DEPUTY GOVERNOR. An American colonial officer who in the absence of the governor performed the duties of that official. For example, the Massachusetts charter of 1629 provided for a deputy governor to be selected by election. Proprietors in proprietary colonies often appointed deputies to represent them during their absence. At times the governor's position was a sinecure, the duties being performed by a deputy who received only a minor portion of the sum allowed the titular governor. See Colonial Charters; Colonial Corporation; Colonization by Great Britain in America; Lieutenant Governor. References: W. MacDonald, *Select Charters* (1899), 41; R. Hildreth, *Hist. of the U. S.* (1854), II, 235; E. B. Greene, *Provincial Governor* (1898). O. C. H.

DESERET, SELF-ORGANIZED TERRITORY OF. A mass convention of Mormons met at Salt Lake City on March 5, 1849, and adopted a constitution of the usual type, of which the preamble declared that "until . . . Congress . . . shall otherwise provide . . . we, the people . . . do ordain and establish a free and independent government by the name of the State of Deseret." Under this constitution Brigham Young was elected governor, and a legislature met in July. This body elected a delegate to Congress and petitioned for admission. It levied import duties, issued money, incorporated the Mormon church, made extensive grants, and exercised jurisdiction over the passing California pioneers. Congress refused recognition and erected the territory of Utah instead (*see* Compromise of 1850), but until the territorial government was organized in 1851 the Deseret authorities continued to govern, and the first territorial legislature declared in force all the Deseret "ordinances." The fiction of a state government was continued for years, the territorial acts were sanctioned, and in 1862 the "general assembly of the State of Deseret" petitioned Congress for admission. See Utah. References: W. A. Linn, Mormons (1902), chs. v, vi, x; H. H. Bancroft, *Utah* (1889), 439–463; O. F. Whitney, *Utah* (1892) I, chs. xxi–xxiii; *House Misc. Docs.*, 31 Cong., 1 Sess., I, Nos. 18, 43 (1850); 37 Cong., 2 Sess., No. 78 (1862). D. M. M.

DESERT LAND. Under the act of March 3, 1877, "all lands exclusive of timber lands and mineral lands which shall not, without irrigation, produce some agricultural crop, shall be deemed desert lands." As amended, the desert-land laws provide for the sale of such land, not exceeding 320 acres to one party, at $1.00 an acre and twenty-five cents entry fee, if at least $3.00 an acre is expended in the necessary irrigation and reclamation and at least one-eighth of the tract cultivated with irrigation within four years. The acts apply only to the thirteen western states and territories, and only resident citizens of the state or territory within which the land is situated may make entry. Annual proof of the expenditure of $1.00 an acre must be made at the end of each of the first three years; but final proof may be made earlier if the total amount has been expended and the land cultivated. Under exceptional circumstances the period for final proof may be extended beyond four years. Desert-land entries on coal lands are limited to 160 acres. Entries may be assigned only to individuals who are themselves qualified to make entry. Prior to June 30, 1912, 6,218,509 acres

were finally entered, price $6,261,237; total receipts, $12,881,653. See CONSERVATION; IRRIGATION; PUBLIC LANDS. References: National Conservation Commission, *Report* (1909), III, 422–5; General Land Office, *Statutes and Regulations Governing Entries and Proof under the Desert Land Laws* (1910), and *Annual Reports*. P. J. T.

DES MOINES PLAN OF CITY GOVERNMENT. See COMMISSION SYSTEM OF CITY GOVERNMENT.

DETECTIVES, PUBLIC. Public detectives are police officers detailed to duty in plain clothes for the purpose of preventing crime or for discovering the perpetrators of crime. In the early stages of police development, detectives were usually ex-criminals employed for the purpose of spying upon their former colleagues in crime; and even yet this type of sleuth is still employed to some extent in the larger cities of France, Spain and Italy. In England and America, however, the public detective is always a police officer of proved efficiency and resourcefulness who is detached from regular duty for special work in the division of criminal investigation.

The public detective force of a large city may be grouped under three heads: (1) the headquarters squad, which takes charge of important cases; (2) the detectives detailed to precincts, who have charge of minor investigations in the neighborhood; (3) those detectives who are assigned temporarily to special duty at various gatherings or functions of a semipublic nature.

The selection of detectives is usually made by the police chief or commissioner and depends cheifly upon the skill and resourcefulness displayed by patrolmen in the discharge of their ordinary duties. But the work is of a nature that demands both training and experience; hence officers are usually left at this branch of duty for long periods.

The proper organization and supervision of the detective force is one of the most difficult problems of police administration. Working in plain clothes the detective is not constantly under public scrutiny as is the uniformed officer; his opportunities for profitable collusion with lawbreakers are plentiful; and he has too frequently been used in the work of levying blackmail for the profit of the precinct captain.

Private, as distinguished from public, detectives are men supplied by agencies for work that is not of a public nature. They are not attached to the regular police establishment, do not often work in coöperation with it, and their possibilities of mischief are greater in consequence.

See PINKERTON MEN. W. B. M.

DETENTION HOMES. Most of the juvenile court laws of the United States provide for the establishment of "detention homes" designed for the temporary care of children awaiting the action of the juvenile court. Such detention homes are usually established in dwelling houses which are rented for the purpose. Some of them are used exclusively for the care of children classed as delinquent, but most of them receive both delinquent and dependent children. Usually these two classes are separated as far as practicable and the sexes are separated.

In Chicago, Milwaukee and Philadelphia, juvenile court buildings have been erected containing juvenile court rooms, waiting rooms and the detention home. In Buffalo, Syracuse and Columbus, private houses have been rented and fitted up to accommodate both the juvenile court and detention home. In other cities the detention home and the court rooms are in separate buildings.

Many detention homes are under the charge of a matron with the assistance of such male officers as are necessary; others are administered by a husband and wife. The effort is invariably made to free the detention home from the aspect and atmosphere of a jail.

The Rochester juvenile court law provides that:

> The Board of Superivsors may establish, equip and maintain a home for the temporary detention of such children separated entirely from any place of confinement of adults, to be called a county shelter, which shall be conducted as an agency of the county court for the purpose of this act, and, so far as possible, shall be furnished and carried on as a family home and shall be in charge of a superintendent and a matron who shall reside therein. The county judge shall have authority to appoint said superintendent, matron and other officers; * * * the necessary expense incurred in maintaining such county shelter shall be paid by the county.

See CHILDREN, DEPENDENT, PUBLIC CARE OF; DEFECTIVE CLASSES, PUBLIC CARE OF; COURT, JUVENILE; SCHOOLS, INDUSTRIAL.

References: Nat. Conf. of Char. and Correction, *Proceedings* (1900 to date); H. H. Hart, *Preventive Treatment of Neglected Children* (1910); Chicago Juvenile Protective Association, *Reports and Investigations Relating to Home Surroundings of Delinquent Children and Destructive Agencies Affecting Their Welfare* (1910–11); Cook County Commissioners, *Report of Committee on the Juvenile Court of Cook County, Illinois.* HASTINGS H. HART.

DICKINSON, JACOB McGAVOCK. Jacob M. Dickinson (1851–) was born at Columbia, Miss., January 30, 1851. He served for a time in the Confederate Army, then studied law in this country and in Europe, and in 1874 was admitted to the bar of Tennessee. He practiced at Nashville until 1899, when he removed to Chicago. Under special commission he several times sat in the supreme court of Tennessee. He early became prominent as a Democrat in state politics, and in political reform movements in Nashville. From Febru-

ary, 1895, to March, 1897, he was assistant attorney general of the United States, and in 1903 was counsel for the United States before the Alaskan Boundary Tribunal. In March, 1909, he became Secretary of War, holding that office until May, 1911, when he resigned. See WAR, DEPARTMENT OF. References: *Congr. Directory*, 61 Cong., 1 Sess. (1910); *Am. Year Book, 1911.* W. MACD.

DICKINSON, JOHN. John Dickinson (1732–1808) was born in Talbot County, Md., November 2, 1732. He studied law at Philadelphia and at the Middle Temple, London, and in 1757 began practice at Philadelphia. From 1760 to 1762 he was a member of the Delaware assembly, and of the Pennsylvania assembly from 1762 to 1765 and 1770 to 1776. He was a delegate to the Stamp Act Congress in 1765, where he drafted the Declaration of Rights and the Petition to the King. In 1767–68 he published, in the Pennsylvania *Chronicle* his *Letters from a Farmer,* in which he argued forcibly against the policy of the Townshend acts, and did much to solidify the opposition to Great Britain. In the Continental Congress he drafted the *Declaration of the Causes and Necessity of taking up Arms* (1775). According to a letter from Howard Rutledge to John Jay (June 29, 1776), "the plan of a confederation was drawn by Dickinson," but a certain moral hesitancy made him oppose a declaration of independence, and lost him much of his popularity. Nevertheless he accepted the action of Congress and the country, and served for a time in the American Army. In 1779–80 he represented Delaware in Congress, was for several years president of the Pennsylvania council, sat in the Federal Convention of 1787, and strongly supported the Constitution. He died at Wilmington, Del., February 14, 1808. See CONTINENTAL CONRGESS; REVOLUTION, AMERICAN, CAUSES OF. References: C. J. Stillé, "*Life and Times of John Dickinson*" in Hist. Soc. of Pa., *Memoirs,* XIII (1891); John Dickinson, *Writings* (ed. by P. L. Ford), *ibid,* XIV (1895). W. MACD.

DIET, FEDERAL. See GERMANY, FEDERAL DIET OF.

DIFFERENTIALS IN RAILROAD TRAFFIC. A differential may be defined as a fixed difference between rates for similar or competitive commodities, established by agreement. As the differential is a fixed difference, the determination of the standard rate automatically fixes the "differential" rate. The term "differential" has a variable use in railroad practice and in the decisions of the commissions. However, there are three important cases in which the term is invariably employed that will serve as illustrations. In the first place, Atlantic Seaboard differentials have, since the decision of an arbitration committee in 1877, been granted to Philadelphia and Baltimore, which have secured to these cities, because of their supposed disadvantages in ocean shipments, lower rates than those accorded to New York and Boston. Again, in order to equalize conditions, fairly distribute traffic, and avoid rate wars, the shorter and better equipped and established trunk lines, known as "standard lines," have accorded to the roundabout and inferior, or so-called "differential lines," somewhat lower rates, secured through the establishment of a fixed difference. Finally, differentials are established between competitive commodities, such as wheat and flour, livestock and dressed meats. See INTERSTATE COMMERCE COMMISSION; DISCRIMINATION IN RAILROAD RATES. References: Digest of Elkins Committee Hearings, *Sen. Docs.,* 59 Cong., 1 Sess., No. 244 (1905), 61–69. F. H. D.

DIMINISHING RETURNS. A term used to designate those conditions in production where each additional and equal unit, or "dose," of labor and capital applied yields a smaller product, or return, than the last. It is commonly known as the principle or law of diminishing returns, and was once (erroneously) supposed to operate exclusively in agriculture.

E. H. V.

DINGLEY TARIFF ACT. The tariff act of 1897 for which Nelson Dingley of Maine, as chairman of the House Committee on Ways and Means, was responsible. During the debate emphasis was laid upon the injurious operation of the Wilson-Gorman tariff (*see*) of 1894; and although that act was by no means a low tariff measure, to it was attributed the industrial depression which the country had suffered, beginning in 1893, the year before the act was passed, and lasting until 1896. Once more the uncompromising principle of protection as laid down in the McKinley tariff of 1890 (*see*) was reasserted; duties were reimposed on wool, increased on flax, woolens, silks, and linens, and on certain manufacturers of iron and steel. The duty on sugar was raised and made specific, in aid of the new beet sugar industry. The principle of reciprocity, acknowledged by the McKinley tariff, was nominally adopted, but was made operative by treaties executed by the Senate instead of by executive proclamation as in the act of 1890 (*see* RECIPROCITY). The Dingley tariff was in effect twelve years, longer than any tariff since 1828. See DUTY ON IMPORTS, AVERAGE RATE OF; PAYNE-ALDRICH TARIFF; TARIFF LEGISLATION, FRAMING OF; TARIFF POLICY OF UNITED STATES; TARIFF RATES; TAXATION OF RAW MATERIALS; WILSON-GORMAN TARIFF. References: F. W. Taussig, *Tariff Hist. of the U. S.* (1910), 321–360; E. Stanwood, *Am. Tariff Controversies* (1903), II, 378–389; D. R. Dewey, *Financial Hist. of the U. S.* (1903), 463. D. R. D.

DIPLOMACY AND DIPLOMATIC USAGE

Right of Legation.—The right of legation, or the right of sending and receiving diplomatic agents, has not always been recognized. Modern states, however, generally maintain their representatives at one another's capitals to transact interstate business. Not to be willing to receive a diplomatic representative is now regarded as an evidence of an unfriendly disposition. To decline to receive a given person as diplomatic representative on the ground that he is personally not acceptable—*persona non grata*—is not an unfriendly act, but may be simply an evidence of the desire that the relations may be carried on in the most satisfactory manner. While it is not necessary for a state to ask in advance whether a proposed diplomatic representative will be acceptable, it is often done and the United States has usually made such inquiry before naming persons to the office of ambassador.

The head of a state may treat directly with the head of another state or indirectly through representatives. In the United States the State Department, usually known in other states as the department of foreign affairs, conducts international business. Diplomatic representatives are appointed by the President of the United States by and with the advice and consent of the Senate.

Rules of the Congress of Vienna.—The practice of all states which are members of the family of nations generally conforms to rules established at the Congress of Vienna early in the nineteenth century. These regulations are stated in the sections of the "Instructions to Diplomatic Officers of the United States" as follows:

18. *Rules of Congress of Vienna.*—For the sake of convenience and uniformity in determining the relative rank and precedence of diplomatic representatives, the Department of State has adopted and prescribed the seven rules of the Congress of Vienna, found in the protocol of the session of March 9, 1815, and the supplementary or eighth rule of the Congress of Aix-la-Chapelle of November 21, 1818. They are as follows:

"In order to prevent the inconveniences which have frequently occurred, and which might rise again, from the claims of precedence among different diplomatic agents, the plenipotentiaries of the powers who signed the Treaty of Paris have agreed on the following articles, and they think it their duty to invite the plenipotentiaries of other crowned heads to adopt the same regulations:

"Article I. Diplomatic agents are divided into three classes: That of ambassadors, legates, or nuncios; that of envoys, ministers, or other persons accredited to sovereigns; that of chargé d'affaires accredited to ministers for foreign affairs.

"Art. II. Ambassadors, legates, or nuncios only have the representative character.

"Art. III. Diplomatic agents on an extraordinary mission have not, on that account, any superiority of rank.

"Art. IV. Diplomatic agents shall take precedence in their respective classes according to the date of the official notification of their arrival. The present regulation shall not cause any innovation with regard to the representative of the Pope.

"Art. V. A uniform mode shall be determined in each state for the reception of diplomatic agents of each class.

"Art. VI. Relations of consanguinity or of family alliance between courts confer no precedence on their diplomatic agents. The same rule also applies to political alliances.

"Art. VII. In acts or treaties between several powers which grant alternate precedence, the order which is to be observed in the signatures shall be decided by lot between the ministers.

"Art. VIII. It is agreed that ministers resident accredited to them shall form, with respect to their precedence, an intermediate class between ministers of the second class and chargés d'affaires."

19. *Grade of diplomatic representatives.*—The diplomatic representatives of the United States are of the first, the second, the intermediate, and the third classes, as follows:

(a) Ambassadors extraordinary and plenipotentiary.

(b) Envoys extraordinary and ministers plenipotentiary, and special commissioners, when styled as having the rank of envoy extraordinary and ministers plenipotentiary.

(c) Ministers resident.

"These grades of representatives are accredited by the President.

(d) Chargés d'affaires, commissioned by the President as such, and accredited by the Secretary of State to the minister for foreign affairs of the government to which they are sent.

In the absence of the head of the mission the secretary acts ex officio as chargé d'affaires ad interim, and needs no special letter of credence. In the absence, however, of a secretary and second secretary, the Secretary of State may designate any competent person to act ad interim, in which case he is specifically accredited by letter to the minister for foreign affairs.

20. *Superadded consular office.*—When the office of consul general is added to that of envoy extraordinary and minister plenipotentiary, minister resident, chargé d'affaires, or secretary of legation, the diplomatic rank is regarded as superior to and independent of the consular rank. The officer will follow the Consular Regulations in regard to his consular duties and official accounts, keeping correspondence in one capacity separate from correspondence in the other.

Ambassadors.—The United States had not sent diplomatic representatives of ambassadorial grade to foreign countries till after the passage of the act of March 1, 1893, which provided that,

whenever the President shall be advised that any foreign government is represented or is about to be represented in the United States by an ambassador, envoy extraordinary, minister plenipotentiary, minister resident, or special envoy or chargé d' affaires, he is authorized in his discretion to direct that the representative of the United States to such government shall bear the same designation. This provision shall in no wise affect the duties, powers, or salary of such representative.

The first ambassadors received and accredited under this law were those from and to Great Britain. The representatives to Austria-Hungary, Brazil, France, Germany, Italy, Japan, Mexico, Russia, Spain, and Turkey have also been raised to the grade of ambassadors, the representative to Spain, the latest, in 1913.

Permanence.—The tendency in the United States in recent years has been toward the placing of the diplomatic service upon a more permanent basis similar to that of certain

other states in which the service is regarded as a career and where special attention is devoted to rendering the service efficient. An executive order of November 26, 1909, provided for promotion on the basis of efficiency and for examination for entrance to certain grades of the service.

Privileges.—The diplomat as representing the dignity of his state is now entitled to certain privileges, prerogatives, and immunities, which were formerly tendered to him because he represented a personal sovereign. He is exempt from civil and criminal jurisdiction. His person is inviolable. He has jurisdiction within his domicile. He is entitled to religious freedom within his official residence. His official residence is exempt from local jurisdiction. Both his person and his official property are exempt from taxes and duties. Sometimes betterment taxes, water rates, and similar assessments are paid. Of course, a diplomatic representative may be restrained from committing certain acts which if committed by an unofficial person would render him liable to punishment.

Many prerogatives and special privileges, such as the right to a salute of a specified number of guns—ambassador nineteen, envoy extraordinary and minister plenipotentiary, fifteen, minister resident, thirteen, charge d'affaires, eleven; the right of invitation to various state ceremonies and functions; the right to the use of the national coat of arms and national flag over the official residence and to the title of Excellency, are not now questioned. Others, such as the right to ride in a coach with six horses with outriders; the right to a dais with a throne in the reception chamber; the right to remain covered in the presence of the sovereign are mainly of historical interest.

It is, however, essential for the easy and harmonious transaction of interstate business that a certain degree of ceremony be observed as indicative of the respect paid to the dignity of the state which the diplomat represents.

Duties.—The duties of a diplomatic representative are to carry on negotiations with the state to which he is accredited, to report to his own state matters which may be of importance, and to care for the rights of nationals of his state. A diplomatic representative, in order to fulfill best his mission, is usually obliged to assume certain social obligations and to live with a dignity fitting the state which he serves. Some states provide liberally for such purposes and also own and furnish the official residence. The United States, with few exceptions, does not provide any official residence. The salary paid to United States ambassadors is $17,500 each; to envoys extraordinary and ministers plenipotentiary, $10,000 to $12,000; to one minister resident (and consul general), $5,000; and to one agent (and consul general), $6,500, making for salaries for the heads of all the American diplomatic missions abroad a total of a little over $500,000.

Reception.—The term of a diplomatic agent begins for international purposes with his reception by the authorities of the state to which he is accredited.

A United States representative receives a letter of credence which establishes his identity and requests "full credence for what he shall say on the part of the United States." The diplomat, if of a grade above that of chargé d'affairs, requests an audience of the sovereign and usually presents his letter of credence on his reception. He may then enter upon his duties.

Termination of Office.—A diplomatic mission man be terminated through the recall of the diplomat by his Government. It was formerly customary for the United States to recall a large number of her diplomatic representatives at each change of national administration. In recent years there has been developed a degree of permanency in this service though changes are frequent. Recall is sometimes an evidence of strained relations or a protest against the action of the state from which the diplomat is summoned. Baron Fava the Italian minister to the United States was withdrawn from the United States on account of the feeling of Italy that the American Government had failed to give proper attention to the claims of Italy arising from the lynching of its citizens in New Orleans. The American minister was also withdrawn from Rome. (*Foreign Relations*, 1891, 665 *et seq.*) The Spanish minister was withdrawn from the United States immediately before the outbreak of the Spanish-American War in 1898 and he was handed a passport containing the following: "To all to whom these presents shall come greeting: Know ye that the bearer hereof, Senor Don Luis Polo de Bernabé, envoy extraordinary and minister plenipotentiary of Spain to the United States, is about to travel abroad, accompanied by his family and suite. These are therefore to request all officers of the United States or of any state thereof, whom it may concern, to permit them to pass freely, without let or molestation, and to extend to them friendly aid and protection in case of need. In testimony whereof," etc. Mr. Woodford, the American minister to Spain, was similarly withdrawn (*Foreign Relations*, 1898, 766 *et seq.*). War would in any case terminate diplomatic relations.

In some instances a change of government may terminate diplomatic relations, as when a government changes from a monarchy to a democracy.

The expiration of the period for which the appointment of the diplomat was made, the completion of the work of a special mission, the official departure or dismissal of the diplomat or the death of the diplomat may terminate the mission. The mission of one grade may terminate when a diplomat presents his letters

of recall as one grade and of appointment to another grade in the same state.

Entrance by Examinations.—An attempt has been made to place the diplomatic service of the United States upon a more permanent basis through the establishment of a system of examinations for entrance to certain diplomatic offices. While the Constitution of the United States provides that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls" (Art. II, Sec. ii, ¶ 2), the President also has authority under act of Congress to provide for admission into the civil service under such regulations for entrance as may determine the fitness and capacity of the candidate. By an executive order of November 26, 1909, promotions within the diplomatic service are to be based upon well established efficiency. The initial appointments to secretaryships are to be made only to the lowest grades. Vacancies in the higher offices are to be filled only by promotion. Candidates are examined on the following subjects:

International law, diplomatic usage, and a knowledge of at least one modern language other than English, to wit, French, Spanish, or German; the natural, industrial, and commercial resources and the commerce of the United States, especially with reference to the possibility of increasing and extending the trade of the United States to foreign countries; American history, government, and institutions, and the modern histories since 1850 of Europe, Latin America and the Far East. An oral examination is to determine the candidate's alertness, general contemporary information, and a natural fitness for the service, including mental, moral, and physical qualifications, character, address, and general education, and good command of English.

See AMBASSADOR; ASYLUM, INTERNATIONAL; ATTACHÉ; DIPLOMATIC AGENT.

References: J. W. Foster, *Practice of Diplomacy* (1906); E. Schuyler, *American Diplomacy* (1901); F. Van Dyne, *Our Foreign Service* (1909); John Bigelow, *Recollections of an Active Life* (1910); A. D. White, *Autobiography* (1910). GEORGE G. WILSON.

DIPLOMATIC AGENT. The term "diplomatic agent" is used in international law to describe the official representative sent by one country to another for the conduct of political as distinguished from commercial questions, which latter are handled by consuls (*see*). "A letter of credence" which they present to the sovereign or chief executive of the foreign state identifies them as the representatives of their states. Special empowering documents called "full powers" are given them when the object of their mission is beyond the scope of the ordinary business of a permanent legation.

A classification of diplomatic agents was adopted at the Congress of Vienna (1815), and enlarged by the Congress of Aix-la-Chapelle (1818), but has never been universally adopted: (1) ambassadors; (2) envoys extraordinary and ministers plenipotentiary; (3) ministers resident; (4) chargés d'affaires. In Roman Catholic countries nuncios of the rank of ambassadors, and internuncios of the rank of envoys extraordinary, are received from the Pope.

See AMBASSADOR; COLONIAL AGENTS; DIPLOMACY AND DIPLOMATIC USAGE; DIPLOMATIC COMMISSIONERS; DIPLOMATIC INSTRUCTIONS; DIPLOMATIC SERVICE OF THE UNITED STATES; INSTRUCTIONS TO MILITARY AND NAVAL AUTHORITIES; LEGATIONS.

References: L. Oppenheim, *International Law* (1912), 443–480; J. B. Moore, *Digest of Int. Law* (1906), IV, §§ 623–695; W. E. Hall, *International Law* (1909), 290–316; C. de Martens, *Le Guide Diplomatique* (5th ed., 1866); P. L. E. Pradier-Fodéré, *Cours de droit diplomatigue* (2d ed., 1881); see also general treatises on International Law. J. B. S.

DIPLOMATIC AGREEMENTS. The relations between civilized states rest in part upon custom, in part upon the statutes of the various states, and still more upon formal written documents approved in identical form by the sovereign authority of two or more participants, and commonly called treaties (*see*). A treaty, until expired, abrogated, or superseded by a conflicting statute, morally binds the nation and legally binds courts and individuals. Does this principle apply also to understandings between the executives of two nations, not subject to the ordinary treaty making power?

The question does not arise in Great Britain, where treaties are made by the ministry and laid before Parliament for its information, so that an agreement has substantially the same force upon the nation as a treaty. In the United States, for more than a century, there was hardly an instance where the President made any reciprocal agreement with a foreign power which was not embodied in a formal treaty or convention submitted to the Senate for its action.

In recent years there have been several such cases, the most striking being a secret understanding (1869), the precise extent of which was never made public, by which President Grant assured President Baez of Santo Domingo, of his expectation that the sister republic would be annexed to the United States. In 1905 President Roosevelt having failed to secure from the Senate the ratification of a treaty to that effect, concluded a *modus vivendi* with the authorities of Santo Domingo, by which an American official was put in charge of the finances of that country, with power to receive the customs and satisfy certain foreign claims, under the protection of the American Navy. The Senate, February 25, 1907, finally ratified a treaty authorizing this arrangement. A similar plan prepared for Honduras and Nicaragua, in 1912, failed of ratification by the Senate.

It is generally believed that President Roose-

velt, in unpublished correspondence with the Emperor of Germany, gave and received certain assurances as to invasions of South America by the Germans, besides the published despatches of December 11, 1901—May 7, 1903. November 30, 1908, Secretary Root signed with the Japanese Ambassador a "note" setting forth the mutual attitude of the two powers toward China and Oriental questions in general, which practically made pledges, as to the future policy of the United States, but was never submitted to the Senate. In the British and French arbitration treaties pending in 1912, a provision authorizing the President to submit questions to arbitration without taking the opinions of the Senate, excited hostility in the Senate and prevented ratification.

As yet no material exists for a conclusion as to whether such formal agreements less than treaties are likely to form a significant part of American diplomatic methods; nor whether the courts will recognize them as the law of the land if cases arise under them.

See DIPLOMACY AND DIPLOMATIC USAGE; NEGOTIATION OF TREATIES BY THE UNITED STATES; PROTOCOL; TREATIES IN INTERNATIONAL LAW.

References: J. W. Foster, *Century of Am. Diplomacy* (1900), *Practice of Diplomacy* (1906), 419, *Am. Year Book, 1910*, 97, and year by year; J. H. Latané, *Am. as a World Power* (1907), ch. xvi. ALBERT BUSHNELL HART.

DIPLOMATIC BUREAU. The Diplomatic Bureau is one of the bureaus of the United States Department of State (*see* STATE, DEPARTMENT OF). It is charged with the conduct of all correspondence between the Secretary of State and the diplomatic representatives of the United States in foreign countries, and between the Secretary of State and the diplomatic representatives of foreign countries. See DIPLOMATIC CORRESPONDENCE. Reference: Secretary of State, *Annual Reports*. A. N. H.

DIPLOMATIC CORRESPONDENCE. A large part of diplomatic negotiation is carried on directly by conference between the representatives of the states. In certain cases it is deemed expedient that the negotiations should be by correspondence. An old maxim pointed out that *litera scripta manet* and written negotiations have both the advantages and disadvantages of permanency. The forms of written communications vary, sometimes being very formal and in the third person and again ranging to the informality of a personal letter (*see* DIPLOMATIC AGREEMENTS).

The diplomatic correspondence between representatives of states is regarded as confidential until published by the order of the government. The degree of publicity given to diplomatic negotiations varies in different states and according to circumstances. The publicity is a matter within the discretion of each state. In general, publication of matters which are still pending is not customary, unless by common consent. Some states publish such parts of their diplomatic correspondence as may be politically expedient at regular intervals—as the United States, which ordinarily has published an annual volume, since 1870 known as *Foreign Relations*.

Other states, as Great Britain, more commonly publish the correspondence relating to a specific subject. The United States, also, at times, publishes the collected correspondence on certain matters.

See DIPLOMACY AND DIPLOMATIC USAGE; NEGOTIATION OF TREATIES BY THE UNITED STATES; PROTOCOL.

References: J. W. Foster, *Practice of Diplomacy* (1906), 75; F. Van Dyne, *Our Foreign Service* (1909), 5, 100. GEORGE G. WILSON.

DIPLOMATIC INSTRUCTIONS. A fundamental principle of diplomatic negotiation is that public ministers are furnished with written instructions as a guide to their communications and agreements with foreign ministers of the countries to which they are accredited. Such instructions are not infrequently drawn up by the minister himself, as was the case of Citizen Genêt in 1793, and of Thomas L. Motley, when he went to England in 1869. These instructions are confidential; but specific instructions on a particular point of controversy are often communicated by order of the government. To act beyond one's instructions is a breach of diplomatic etiquette, and likely to bring on serious trouble with the home government. Thus Erskine, in 1808, made a treaty with the United States which the British Government disavowed on the ground that he had exceeded his instructions. Richard Rush, in 1823, expressed to Canning his willingness to join in a declaration on the status of Latin-America under certain conditions, though beyond his instructions (*see* MONROE DOCTRINE). N. P. Trist, in 1847, was instructed to leave Mexico and return to Washington, but ignored the order and negotiated a treaty which was subsequently ratified, based on his original instructions (*see* GUADALUPE HIDALGO, TREATY OF).

Instructions are signed by the Secretary of State, but if of serious import are previously submitted to the President. Through this system in the present days of telegraph communication a President can keep the closest watch on a negotiation carried on abroad, and can alter his instructions by cable, as was done in 1898 in the negotiation of the peace treaty with Spain.

See DIPLOMACY AND DIPLOMATIC USAGE; NEGOTIATION OF TREATIES BY THE UNITED STATES; PEACE, CONCLUSION OF.

References: J. W. Foster, *Practice of Diplomacy* (1906), chs. v, xii.

ALBERT BUSHNELL HART.

DIPLOMATIC SERVICE OF THE UNITED STATES

Origin.—The diplomatic service of the United States goes back to the beginning of the war for independence. Shortly after the Declaration of Independence, measures were taken to enlist the assistance of European powers, through a Committee of Secret Correspondence, subsequently changed to Committee of Foreign Affairs, upon which devolved the duty of initiating the negotiation of treaties, and of formulating and directing the foreign policy of the new nation. Duane, the Lees, Dana, Izard, Jay, Franklin, Adams, Laurens and others were commissioned by Congress to conduct negotiations, and they composed the first diplomatic corps of the Government, though some had only temporary instructions. From 1778 to the adoption of the Constitution in 1789, fourteen treaties were negotiated and finally concluded.

In 1789, the Department of State was established and a permanent diplomatic corps organized. The somewhat informal missions of the revolutionary period were succeeded by permanent resident embassies or missions, thus following the established practice of other governments. This organization has since been consistently maintained, special embassies or missions now being infrequent and always for a particular object. For a long period after the formal establishment of the Department of State, the diplomatic service was of small proportions, yet it was remarkable for the superior qualifications of its members and for the excellent results attained by them.

Rules of Vienna.—For the sake of convenience and uniformity in determining the relative rank and precedence of diplomatic representatives, the Department of State adopted and prescribed the seven rules formulated by the Congress of Vienna, March 9, 1815, and the supplementary or eighth rule of the Congress of Aix-la-Chapelle of November 21, 1818 (*see* DIPLOMACY AND DIPLOMATIC USAGE).

The diplomatic service as it now exists (1914) consists of eleven ambassadors, thirty-six envoys extraordinary and ministers plenipotentiary, three ministers resident and consuls general, and one diplomatic agent and consul general, besides sixty-five secretaries of embassies and legations of all grades, and, at most missions, naval and military attachés. The distribution of these representatives follows:

Embassies (11).—Austria-Hungary, Brazil, France, Germany, Great Britain, Italy, Japan, Mexico, Russia, Spain and Turkey. The official embassy staff usually comprises a secretary, second and third secretaries and naval and military attachés, but there is no third secretary at Rome, and the staff at Madrid comprises only a secretary and military attaché. In addition to the usual embassy staff, the embassy to China is also provided with a Chinese secretary and assistant secretary, being persons of American birth who have become familiar with the Chinese language, and act as official translators or head interpreters. The embassy to Japan, likewise, has a Japanese secretary and assistant. There are also at the embassies to China, Japan and Turkey bodies of student interpreters who are American citizens selected to be trained in the language of the country where they are stationed.

Legations (36).—With the exception of the missions to Abyssinia, Dominican Republic and Liberia (where the representatives are accredited as ministers resident and consuls general), the representatives accredited to all countries to which ambassadors are not sent, are envoys extraordinary and ministers plenipotentiary. The official legation staff usually is limited to a secretary of the legation, who, in the absence of the minister, acts as chargé d'affaires. Secretaries of the legations to Bulgaria, Roumania, Salvador, Servia and Siam, are also accredited as consuls general. It is sometimes the practice of states to accredit a minister to more than one mission; thus the minister to Bulgaria is also minister to Roumania and Servia; the minister to Greece is minister to Montenegro; the minister to the Netherlands is minister to Luxemburg; and the minister to Paraguay is minister to Uruguay. The ministers resident to Abyssinia, Dominican Republic and Liberia are also accredited as consuls general to those countries. The minister to Abyssinia has no secretary or other staff; the minister to Hayti has a secretary of legation, and the minister to Liberia a secretary of legation and a military attaché. A representative called diplomatic agent, accredited to the Khedive, is stationed at Cairo. He also performs the duties pertaining to the office of consul general.

Appointments to Higher Grades.—Ambassadors, ministers and the various secretaries are appointed by the President and confirmed by the Senate. Ambassadors and ministers to the more important posts are presumed to be selected personally by the President. In other cases, the recommendations of Senators and Representatives are habitually given consideration in the selections.

Appointment of Secretaries.—As to secretaries, it has become of late the established practice of the Government to require special examinations before appointment to the service. The selection of the candidates is made by the President. By executive order of November

10, 1905, vacancies in the office of secretary of embassy or legation could be filled only by transfer or promotion from some branch of the foreign service or by examination as to the qualifications of the candidate. By executive order of November 26, 1909, it was provided that the civil service rules embodied in the act of January 16, 1883, should be applied to the diplomatic service so far as practicable. The intent of the order was to provide for the promotion of members of the service from the lower to the higher grades by reason of their qualifications as shown by their efficiency records. Thus a secretary of legation under this order might be promoted to the post of minister, and from this to the post of ambassador. The practice so far has been carried out with respect to the entrance into the service of secretaries by examination; and in some cases these secretaries have received promotion to missions. An efficiency record of every officer in the diplomatic service is kept in the Department of State. Too much importance cannot be attached to the introduction of the merit policy in the diplomatic service.

The examinations for the position of secretary, provided for by the executive order of 1909, include the following subjects: international law, diplomatic usage, and a knowledge of at least one modern language other than English, to wit, French, German or Spanish; also the natural, industrial and commercial resources and commerce of the United States, especially with reference to the possibilities of increasing and extending the trade of the United States with foreign countries; American history, government and institutions; and the history of Europe, since 1850, Latin America and the Far East. The examinations are not held at stated periods, but only when it is deemed expedient for any reason to increase the number on the eligible list for appointment as secretaries.

Secretaries of missions, of whatever grade, are held to be public ministers, and as such entitled to the personal privileges, immunities, and exemptions usually accorded to diplomatic representatives. Whenever the head of a mission is present, a secretary of embassy or legation cannot hold any representative relation to the foreign government. In the case of the absence, death or disability of the head of the mission, the secretary performs the duties of chargé d'affaires *ad interim.*

Attachés.—Military, naval, scientific or other attachés are appointed by the Secretary of State upon the recommendation of the head of their respective departments, to whom they are also responsible for their service. In the case of the military and naval attachés, they are considered practically as aides-de-camp to the ambassador or minister, and are generally subject to his orders. While possessing the immunities of members of the embassy, they are not representatives of the Government and cannot hold office as chargés d'affaires *ad interim.*

Special Embassies.—Such embassies are appointed to perform a special mission or represent the United States at a special function as, for example, at the funeral or coronation of a foreign ruler. The same rights, privileges, and immunities apply to this class of representatives as to those in the regular service. A special commission may also be appointed to negotiate a treaty, as for the peace with Spain in 1898.

Preliminaries to Assuming Office.—An appointee takes the oath prescribed by Congress (*R. S.* 1757). After this is filed in the department, his commission is given him, together with a letter of credence signed by the President and addressed to the head of the state to which the representative is sent. If the representative is a chargé d'affaires, the letter is signed by the Secretary of State and addressed to the minister for foreign affairs. A special passport, covering himself, his family and suite, is also furnished to the representative.

In practice the appointee visits Washington before proceeding to his post, and is granted what is called an "instruction period." Thus the department may discuss with him any special matters pertaining to his mission, and the representative, at the same time, has an opportunity to examine the previous correspondence from the mission and become acquainted with pending questions. At the end of his instruction period, he proceeds to his post where he arranges for the formal presentation of his letter of credence. The ceremonial consists usually of an appropriate address by the representative and of a reply. The same procedure is followed in presenting letters of recall. A representative of the rank of ambassador or minister presents his letters personally to the head of the state. A chargé d'affaires obtains audience only with the minister of foreign affairs. In all official ceremonials, the representative is governed by the established practice of the country of his mission.

Duties, Privileges and Immunities.—It is the duty of a diplomatic representative to report fully to his own government the status of pending subjects between the two governments, and also information as to occurrences affecting the foreign government and its people, whether of a political, commercial or other character. Commercial matters are, however, as a rule reported upon by the proper consular officers who, in reality, are commercial agents in the broader view of their functions.

Besides these general duties, there are certain specific duties devolving upon diplomatic representatives: protection of American citizens and their property; issuance of passports; extradition of criminals; preferring of claims or complaints; presentations at court, etc. The social duties required are arduous and im-

portant, in that they aid in establishing closer personal relations with the officials of the government, and thereby instill a greater interest and a more friendly feeling in the discussion of controverted subjects. A diplomatic representative enjoys immunity from civil and criminal jurisdiction of the country of his mission; he cannot be compelled to testify before any court, and, moreover, cannot waive his privileges in these respects without the consent of his government. His residence, personal belongings, and official archives are inviolable. Secretaries of embassies or legations, and usually all persons forming the representative's household, enjoy similar immunities.

See AMBASSADOR; ATTACHÉ; CONSULAR SERVICE; DIPLOMACY AND DIPLOMATIC USAGE; ENVOY EXTRAORDINARY; EXTRATERRITORIALITY; INTERCOURSE OF STATES; LEGATIONS; MINISTERS OF THE UNITED STATES; NEGOTIATION OF TREATIES BY THE U. S.; PROTECTION OF CITIZENS ABROAD; SECRETARY OF LEGATION; STATE DEPARTMENT; under DIPLOMATIC; diplomats by name.

References: J. W. Foster, *Practice of Diplomacy* (1906); F. Van Dyne, *Our Foreign Service* (1909); U. S. Department of State, *Instructions to Diplomatic Officers and Register;* J. A. Fairlie, *Nat. Administration* (1905), ch. vi; J. B. Moore, *Dig. of Int. Law* (1906), V, ch. xvi; *Am. Year Book, 1910,* 211, and year by year. OTIS T. CARTWRIGHT.

DIRECT LEGISLATION. See LEGISLATION, DIRECT.

DIRECT PRIMARY. See PRIMARY, DIRECT.

DIRECT TAXES. See TAXES, DIRECT.

DIRECTORS OF CORPORATIONS. The entire management of the business of a corporation is vested in the board of directors. The corporation as an association is owned by the stockholders. The corporation owns certain property with which it carries on business. The owners of the corporation, however, cannot control its business directly. They must act through representatives, usually called directors, who are vested with power to act for the corporation. They appoint officers and agents, authorize contracts, institute and defend suits at law, purchase property, borrow money for the company, determine the company's policy, declare dividends from the surplus profits of the business, and perform all other necessary functions.

Authority.—In managing the business of the company, the directors are not limited by the stockholders. It is true that all the power which the directors have is delegated to them by the stockholders, and that they are responsible to the stockholders, who can turn the directors out of office if dissatisfied with the results of their management. During the term of office as directors, however, the stockholders cannot interfere. In a leading case (Ellerman *vs.* Chicago Junction Railways, 49 *N. J. Eq.* 217) the scope of directors' authority was defined as follows:

> Questions of policy or management, of expediency of contracts or action, of adequacy of consideration not grossly disproportionate, of lawful appropriation of corporate funds to advance corporate interests, are left solely to the honest decision of directors, if their powers are without limitation and free from restraint. To hold otherwise would be to substitute the judgment and discretion of others in place of those determined on by the scheme of incorporation.

Delegation.—The board of directors must act as a board; no director has any authority acting as an individual. The directors may, however, delegate their authority to committees with full power to act for the entire board during the intervals between sessions. It is common to find the affairs of large corporations chiefly managed by an executive committee. There may also be finance committees, manufacturing committees, etc. It is customary, although not essential, that the actions of these committees be reported to the full board and by them approved.

Limitations.—Directors, while they have broad powers, must exercise those powers within the limits of the corporate enterprise. They are bound by the charter and such by-laws, or rules for the government of the corporation, as the stockholders may enact. For example, without the consent of the stockholders, the directors may not enlarge the capital stock of the company. Directors cannot commit the company to acts beyond the legal right of the company to perform. For example, if a company is chartered to carry on the business of mining coal, the directors would not be justified in committing the company to the banking business.

Responbility.—Directors cannot be held liable for the consequences of bad, if honest, judgment. If the company fails, unless it can be shown that they plotted to bring about its downfall, they cannot be held liable. They are liable for a wrongful diversion of the money of the company to themselves, or their friends, and they are also liable for negligence in the management of the business of the company. For example, the directors of a national bank have been held liable for losses due to their authorization of excessive loans to the president.

A corporation is bound, as to third parties, by the acts of its directors. While this rule holds in general, the company can free itself from liability on account of contracts in which directors are personally interested, unless such contracts are disclosed to the stockholders, and ratified by them. If the contract in which directors are interested is unfair to the corporation, however, the stockholders cannot establish it by ratification against the protest of one of their number.

See Banking, Public Regulation of; Corporation, Public; Public Service Corporations; Securities, Federal Commission on; Stockholders, Legal Status of.

References: W. R. Lawson, "Corporation Directors" in *National Rev.*, VL, 47–48, "Wildcat and Tamecat Directors" in *World's Work*, IX (*March*, 1905), 5905–06; J. J. Sullivan, *American Corporations*, ch. ix; A. W. Machen, Jr., *Modern Corporation Law* (1908), chs. xxiv–xxvi. Edward S. Mead.

DIRECTORY STATUTES. Statutes which merely direct or instruct, when, how or by whom certain things shall be done. Violation or disregard of such statutes does not invalidate the act done. See Mandatory Statutes. H. M. B.

DISABILITIES, POLITICAL. The want of ability or legal capacity to take part directly or indirectly in the formation and administration of government, including the right to vote and to hold office. H. M. B.

DISARMAMENT. Following the upheaval caused in Europe by the Napoleonic wars, the Czar of Russia put forward a proposal for the limitation of armaments. In spite of a sympathetic reception on the part of the powers, the proposal was without practical results. It was a later Czar of Russia who again, in 1898, issued the invitation for an international conference, the object of which was to consider the "grave problem" of a reduction of armaments. Unfortunately, the states which assembled at The Hague the following year found it impossible to come to an agreement. A resolution was adopted affiming the desirability of a restriction of military charges, and this resolution was confirmed by the second conference of 1907, which further recommended that the governments should resume the serious examination of the question. On July 25, 1910, the Congress of the United States passed a joint resolution providing for the appointment by the President of a commission "to consider the expediency of utilizing existing international agencies for the purpose of limiting the armaments of the nations of the world by international agreement, and of constituting the combined navies of the world into an international force for the preservation of universal peace. . . ." The President delayed appointing the commission while awaiting an answer to his invitation for the appointment of similar commissions by foreign governments. The essential obstacle in the way of a limitation of armaments is the difficulty of securing agreement as to the method. A proportionate reduction preserving the present relative strength of the powers appears to be the only form in which the proposal would be acceptable to the actually dominant powers; whereas other states would be reluctant to confirm their present position of inferiority into a permanent status. See Armies and Navies, Foreign; Hague Conferences; Hague Tribunal. References: *Revue Général de Droit International Public* (1898), V. 687–743; Ministère des Affaires Ètrangères, La Haye, *Conférence Int. de la Paix* (1899); Deuxième Conférence de la Paix, *Actes et Documents* (1907), I, 90–95.

James Brown Scott.

DISCRIMINATION IN RAILROAD RATES. Discrimination practiced on an extensive scale by the railroads was one of the effective causes for the passage of the Interstate Commerce Act in 1887. Of the various forms which this practice has assumed, the most important are that of place discrimination, which charges the lower rate for the longer haul (*see* Long and Short Haul), and that of personal discrimination in the form of a deduction from the published rate (*see* Rebates in Transportation).

But discriminations have taken a great many forms and under Sections 2 and 3 of the Interstate Commerce Act are held to be unjust and therefore illegal, when different charges are made for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar conditions, or when an undue or unreasonable preference or advantage of any kind whatsoever is granted to any person or locality or particular description of traffic.

Among the forms of unjust discrimination condemned by the commission, in addition to the more common practices of place discrimination and rebating, are diseriminations among shippers in furnishing cars, in the time of closing stations, in time allowance for loading and unloading freight, and in the granting of sidetrack and elevator privileges.

The situation in respect to discriminations in general has greatly improved since the passage of the Interstate Commerce Act.

See Freight Transportation, Classification in; Interstate Commerce Commission; Long and Short Haul; Rebates.

Reference: Beale and Wyman, *Railroad Rate Regulation* (1906), 869–899.

Frank Haigh Dixon.

DISCRIMINATIONS. See Equality Before the Law.

DISEASES, CONTAGIOUS. See Contagious Diseases.

DISEASES, OCCUPATIONAL. See Occupational Diseases.

DISFRANCHISEMENT. Persons may be deprived of the voting privilege for reasons specified by law. Such laws vary in the different states. In nearly all states those who have

been convicted of felony or who are of unsound mind are disfranchised. Some states also disfranchise those convicted of treason or bribery or betting on elections; and those who are inmates of prisons, asylums or almshouses; Virginia and other states disfranchise for duelling, embezzlement of public funds, perjury and petit larceny. The District of Columbia (*see*) has no popular suffrage. Citizens previously entitled to vote were all disfranchised by an act of Congress in 1878 which placed the government of the District of Columbia under direct control of Congress without local representation therein.

During the Civil War and the process of reconstruction many difficulties arose respecting the franchise. Measures passed by the Federal Government excluded from the franchise a large proportion of the white population of the seceded states; but successive acts of pardon and amnesty gradually removed all political disabilities. The admission of the negroes to the elective franchise was bitterly opposed in the South, and by a variety of devices, such as direct violence for a time, by intimidation, by the imposition of educational and property tests carefully guarded to apply only to the blacks, by actual miscount of votes, etc., the colored vote has been greatly limited, and in some states and districts the negro has been practically disfranchised.

See FRAUDS, ELECTORAL; NEGRO SUFFRAGE; PARTY ORGANIZATION; SUFFRAGE CONDITIONS IN THE UNITED STATES.

References: A. B. Hart, *Actual Government* (1903), 69, 70, 83; M. Ostrogorski, *Democracy and the Party System* (1910), 57, 58; C. A. Beard, *Am. Government and Pol.* (1910), 426, 455.

JESSE MACY.

DISPENSARIES, FREE. In many of the larger cities and towns the municipal hospitals offer, through the free dispensaries attached to them, advice and treatment to such sufferers as are not too ill to make the trip from their homes to the dispensary and back. The use of such free dispensaries, whether strictly municipal or private is rapidly increasing. The number of persons in Boston who attended the dispensaries in the year 1909 was equivalent to more than a quarter of the entire population of the city. They are beginning to be made centres of public education in matters of hygiene, and many persons who can well afford medical fees come to them because they know that they can get an expert opinion there which they have no other means of procuring. See HEALTH, PUBLIC, REGULATION OF; HOSPITALS, PUBLIC; POVERTY AND POOR RELIEF; TUBERCULOSIS, CARE AND REGULATION OF. **References:** M. M. Davis, "Efficiency Tests of Out-Patient Work" in *Boston Med. and Surg. Jour.* (June 20, 1912), "Efficiency, Out-Patient Work" in *Jour. A. M. A.*, "Social Aspects of a Medical Institution" in Nat. Conf. on Charities, *Proceedings* (1912), "Medical and Social Coöperation" in *ibid;* R. C. Cabot, "Why Should Hospitals Neglect the Care of Curable Disease in Out-Patients?" in *St. Paul Med. Jour.* (March, 1908), "Suggestions for the Re-organization of Hospital Out-Patient Departments, with Special Reference to the Improvement of Treatment" in *Maryland Med. Jour.* (March, 1907); C. N. B. Camac, "The Out-Patient Clinic," in *Canadian Jour. of Med. and Surg.* (Jan., 1912).

RICHARD C. CABOT.

DISPENSARY. See DISPENSARIES, FREE; HEALTH, PUBLIC, REGULATION OF.

DISTRIBUTION, ECONOMIC

Distributive Shares are also Costs.—Distribution refers not to the industry of transportation or of merchandising, but to the process by which is determined the apportionment of the products of industry among the different coöperating producers and claimants. The product to be distributed is evidently a price product, and the distributive shares are price-fractions out of this aggregate value. These shares accrue to their respective recipients in terms of wages, rents, time discounts, etc. The difficulty in the problem is that the distributive shares to the recipients are costs to the entrepreneurs. Thus the price of the product appears to limit and to determine the distributive shares, at the same time that these distributive shares themselves function as costs, and therefore appear to determine the price of the product which is to be distributed.

Escape from this seeming circle is found in recalling that the ultimate determinants of value are in the relative intensity of the wants of men on the demand side, as over against the productive efficiency of labor and equipment on the supply side. The costs of the entrepreneur determine value (or price) only in the sense that they express these facts of relative want and of relative scarcity of the productive agents or instruments in the terms in which these influences make themselves manifest in the process of production for the market. Wants being assumed, the casual sequence runs upon the supply side of the problem from scarcity of instruments and agents to scarcity of products, thence to the high price of products, thence to the hire of the instruments and agents. But to the individual entrepreneur the costs appear to determine the price; or equally well the price appears to determine the costs.

Primary Apportionment.—It suffices, however, for the present purposes to hold firmly

in mind that all coöperatively produced values are apportioned among the different coöperating factors under the directive activity of the entrepreneur (entrepriser). That is to say, compensations are awarded through the competitive bidding of the entrepreneurs in their attempt for their own gain to control the value productive efficiency of the factors; the remunerations as awarded (distributive shares to the recipients) function as costs of production in the computation of the entrepreneur.

Secondary Distribution.—There is, however, not the less but the greater need to appreciate that there are further or supplementary or secondary distributions of wealth and product in society. Gift, inheritance, taxation, theft, pensions, subsidies, patents, royalties, and monopolies, all function in greater or less degree as disturbances of the primary distributive process or as separate and secondary distributions. It has been asserted that two-thirds of the wealth of America is made up either of the capitalized bounty of nature appropriated in private ownership, or of the capitalized value of privileges and franchises, or of the capitalized value of monopolistic plunderings of society. In the degree that this assertion is justified there must be inferred a bad distribution of social product in the past, a resulting bad property situation in the present, and, upon the basis of the present situation, a continuing bad distribution of product extending probably far into the future.

Productivity Theory in the Large.—Almost all of those theories of distribution now seriously advocated and commanding any considerable acceptance adopt the large general principle of what is called the productivity theory of distribution and are perhaps best regarded as variants of that theory. The stricter formulation of the theory, however, declares that under perfect competition each factor of production will be paid in the precise proportion of its contribution to the product. But is it possible to isolate any separate and specific productivity, and thereupon to declare the compensation received to be the precise equivalent of this productive efficiency? As a large and vague general principle, the productivity theory must clearly enough be adjudged valid, in the sense that the bid of the entrepreneur for the services of any factor of production must find its motive and its basis and its outside limit in the added price product to be expected. And in a general way, also, it must be true, if competition is effective and complete, that the entrepreneur pays not greatly less for the productive factor than what he can afford to pay. Interpreted, then, to mean not more than this, the productivity theory is unquestionably tenable; but forthwith it is to be added that so interpreted it is as trite as it is tenable—is, indeed, almost self-evident. The theory, however, goes much further than this to positions distinctly its own. It says that under perfect competition the distributive share apportioned to each factor would be the precise and accurate correlative of its productive contribution; that the amount of this productive contribution is capable of being accurately determined, and the coincidence of it with the amount of compensation established. The corollaries are also formulated without compromise or ambiguity: (1) the competitive system is good so far as it is really competitive; (2) as a system, competition contains in itself and by its own inner necessity the warrant and the guarantee of justice; if anywhere it falls short of complete equity, there is, in this very fact, proof that somewhere the competitive process has not been carried out to the full. The logic of the system is a perfect ethics; therefore any other economic order, diverging in its results from what perfect competition would achieve, is by this very fact discredited.

Productivity Theory Criticised.—For an accurate understanding of the issues involved, it must first be recognized that the productivity under consideration means, and can mean, nothing more than productivity in terms of price. What the entrepreneur pays a wage for, or a rent for, is the result that he hopes to attain; it is to get an increment of price that he consents to undergo a price outlay; it is this price increment that sets also the outside limit upon his disposition to pay. This productivity theory appears then, to declare that what the employed factor gets is what the employer can afford to pay. In fact he does not always pay this much. But it is in any case clear that it is only a product in terms of price that can serve as a motive or a basis for a price outlay. No one pays or gets paid for the doing of a thing that is merely useful.

Is there a Specific or Distinguishable Product?—Whether there is any test of the price productivity of a day's labor other than the market price which the day's labor commands—whether, that is to say, the theory does not determine what the labor produces by finding out what it gets, as the basis for the conclusion that what it gets it produces, is a question which must be for the moment, postponed. If, however, the theory be taken to assert that under perfect competition the employer would have to pay as wages or as rent all that he can at the outside pay, the defect in the theory lies in the simple untruth of the assertion. Entrepreneurs, as we have seen, differ in skill and in the direction of their skill. The actual hire of any isolated productive item, even if precisely coincident with the maximum bid of some one competing bidder, is altogether unlikely to be coincident with the maximum bid of the successful competitor. All that the latter must pay is enough to outbid the next strongest bidder's bid. There may be, and commonly is, for the successful bidder, an appreciable differential between the possible

bid and the actual bid. One housewife, for example, gets good service out of a maid that no other woman can get along with at any wage. Stonewall Jackson's efficiency as a corps commander was in no small part his peculiar adaptation to the needs and the abilities of his particular chief. Efficiency is a quality only in the sense that it is a relation.

Productivity not Social Service.—It should be added, also, that the productivity that has to do with the present analysis—the productivity for which a hire is paid by the entrepreneur —is not a productivity according to the test of social welfare but only of private gain. There is no necessary implication of merit or of deserving or of social service. What the entrepreneur can pay and will pay has to do solely with the advantages to him in his pursuit of gain in terms of price. The wage is earned, if the work is of a sort to bring an adequate price return to the employer; it does not matter whether the process be one of adulteration, the compounding of poisons, the writing of advertising lies, the drawing up of false affidavits, the circulating of libels, or even the commission of murder. In the strict logic of business, distinctions of this sort do not exist, and the terms to express them are mere irrelevancy or vituperation. And even when distributive justice may be in some sense attained, it must be solely a justice between employer and employed. Society is not a participant in the distributive equity of competitive business.

Functional vs. Personal Distribution.—And further: even if the rent, say of land, could be shown to be accurately or in some approximate way, the correlative of its productivity in terms of price, this would be worlds away from justifying the payment of the rent to any individual. Assume it, for the time being, as commonly true that the entrepreneur attains his ends of private gain through ministering to social welfare. Assume, that is to say, that the land rented by him contributes not to the store of alcohol, or of nicotine, or of opium, but to the supply of barley for the making of bread. Let the rent be paid and let it be neither too much nor too little. *But paid to whom?* The justification of the private ownership of land is surely not to stand or to fall with the proof that the rent of the land no more than offsets the productive service attributable to it. This question of the reasonableness of the rent concerns solely the tenant as against the owner. Take it that the rent is really just; it is entirely another question whether it may accrue justly to any private individual. So, likewise, with all instruments of production—social capital, and their hires; even were all private capital also social capital, and even were the owners of this capital receiving less than the productive contribution of their properties, the collectivist programme would not be appreciably the weaker. It would still be open to the socialists to denounce private ownership in the means of production—perhaps even the more vigorously that the entrepreneurs were able to hire their equipment so cheaply. Not the necessity or the nature of rent and interest, but the private receipt of them is the controversial question.

Specific Productivity Impossible.—No more can be safely asserted of the distributive process in competitive society than that the hire of each productive factor is merely the market price of its services as determined through the competition of the men who are endeavoring to command these services in view of the marketable results which may be achieved through their control. The distributive share is not the precise equivalent of the value productivity but is merely the market value of this value productivity. The different entrepreneurs being different, the productivity is a different one for each different entrepreneur. Precisely as the utility of a consumption good has nothing directly to say as to how much any individual bidder will pay for it, so also the productive efficiency of a production good is not decisive as to the bid of any particular enterpreneur, and particularly is not decisive of the market adjustment as effected by all the different bids. With many buyers or renters, the actual payment, whether for consumption or for production goods, falls appreciably short of what would be justified as the maximum outlay. Productivity like utility is a relation to a particular individual. There is neither productivity or utility at large or socially.

Separable Productivity Impossible.—It is also as to be held in mind that any particular item of productive wealth or of productive labor is needed by the entrepreneur to supplement or to complete a particular equipment already in hand. The different factors of production must work together to achieve their greatest effectiveness. Land without tools, labor without land, tools without land or labor, would return a meager product. It is to this fact of joint employment that most of the product is due. That the factors are brought together is, itself, the proof of advantage attaching to the mere fact of conjunction. How, then, proceed to attribute to any one of the factors the increase of the product due to the joint employment? So long as either glove is necessary to the worth of the pair, how tell how much either is worth? Two dollars may be offered to get back a lost glove out of a two dollar pair. Thus it is easy enough for the entrepreneur to determine how much he can afford to pay for an item of production goods or labor to go with his present equipment, but this is not at all to attribute to the extra item all the increase of product which will accrue with the addition of the extra item. In the last analysis the entrepreneur himself could not isolate and determine a specific productivity relatively even to himself, but only that

which he can afford to pay. And, as we have seen, no one of all these different sums that the different entrepreneurs can respectively afford to pay has any especial title to be regarded as the specific significance of the productive factor.

The argument sums up, then, in this: That it is beyond the wisdom of any entrepreneur to make accurate ascription of the productive efficiency of any one of the factors of production jointly engaged in the productive process; still more is it impossible to regard the remuneration which is accorded to any factor in its market rental or price as precisely expressive of its productive efficiency.

See Cost, Economic; Economic Theory, History of; Production; Supply and Demand.

References: T. N. Carver, *Distribution of Wealth* (1904); J. A. Hobson, *Economics of Distribution* (1900); J. B. Clark, *Distribution of Wealth* (1899); H. J. Davenport, *Value and Distribution* (1907); G. L. Dickinson: *Justice and Liberty* (1908), 81–130.

H. J. Davenport.

DISTRIBUTION OF POWERS. In addition to providing, in outline, a framework of government for the nation, the Federal Constitution has necessarily the function of determining the character and extent of the powers that may be exercised by the general Government and the statement of those which may not be employed by the states. In effect, the powers of the member states of the Union, as well as those of the Union are determined by the Constitution, for the principle, as explicitly stated in the Tenth Amendment, is "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." From the powers expressly delegated to the United States a wide reach of federal authority has been developed by applying the principle stated in the Constitution (Art. I, Sec. viii, ¶ 18) that Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers [expressly enumerated] and all other powers vested by the Constitution in the government of the United States, or in any department or officer thereof." The phrase "necessary and proper" has been construed to justify the exercise by the general Government not only of those powers which are indispensably necessary to the exercise of the powers expressly given, but of every authority which will in any substantial way be an aid in the performance of any of the duties coming within its constitutional sphere (*see* Constitution of the U. S., Prohibitions in; Construction and Interpretation; Implied Powers; Necessary and Proper.

Included within the express limitations enumerated in the Constitution, there are deducible additional implied restrictions upon federal authority. And, also, important limitations upon the powers both of the Federal Government and of the states have been drawn from the general nature of the American federal system. In general it has been held that the grant to the general Government of authority to legislate with reference to a given matter does not deprive the states of the power to legislate with reference to the same matter as long as Congress has not in fact exercised its right of control. Where, however, the matter is one which, from its very nature, requires, if regulated at all, a system of control uniform throughout the United States, the federal power is exclusive, and the states are without any power whatsoever. Certain powers are, by the Constitution, denied to both the federal and state governments.

See Concurrent Powers; Federal State; United States as a Federal State.

References: B. A. Hinsdale, *Am. Government* (4th ed., 1905), ch. xii; R. G. Gettell, *Intro. to Pol. Sci.* (1910), ch. xiv; W. W. Willoughby, *Am. Constitutional System* (1904).

W. W. Willoughby.

DISTRICT ATTORNEY, FEDERAL. The office of district attorney was created by the famous Judiciary Act of September 24, 1789, which provided for the appointment in each district of "a meet person learned in the law to act as attorney for the United States in such district." This officer is the prosecuting officer of the Federal Government in all suits against violators of federal laws, and he also represents the United States in all civil actions in which the Federal Government is concerned except those before the Supreme Court. He is especially charged to appear in behalf of revenue officers who are defendants in suits brought to recover money paid into the Treasury; to assist in determining titles to lands in his district which the United States is in process of acquiring; to represent in prize cases the interests of the United States and of the captor; to take cognizance of offences against persons under the Civil Rights Act; to represent those Indians who are wards of the nation in all actions in which they are involved, and to institute actions against persons who make false claims against the United States. This name is also given in several states to the corresponding local prosecuting officer. See Attorney General, State; Court, County; Law, Criminal; State Judiciary. L. B. E.

DISTRICT COURT OF THE UNITED STATES. See Courts, Federal.

DISTRICT COURTS, STATE. See State Judiciary.

DISTRICT LEADER. See Captain of Election District; Organization; Tammany.

DISTRICT OF COLUMBIA

General Description.—The District of Columbia is the seat of government of the United States; a municipal corporation, area about 64 square miles, including the bed of the Potomac river to the Virginia shore; formerly a portion of Maryland. It is situated at the head of navigation, about 300 miles from the sea. In 1910 the population of the District was 331,069, an increase of 18.8 per cent in ten years.

Location of the Capital.—The Continental Congress and its successor, the Congress of the Confederation, assembled in eight cities in four different states. Driven from Philadelphia to Princeton by a mob of armed soldiers unchecked by local authorities, Congress determined to create a capital city under its own control; and from its ever empty treasury appropriated $100,000 for that purpose. The Constitutional Convention, at the instance of Madison, placed among the enumerated powers of Congress the exercise of exclusive jurisdiction in all cases whatsoever over such district (not exceeding ten miles square), as might, by cession of particular states and the acceptance of Congress, become the seat of government of the United States. Maryland and Virginia, acting jointly in 1789, made tender of ten square miles of territory, together with gifts of money for the erection of government buildings; and by the act of July 16, 1790, the national capital was located on the banks of the Potomac. The date of removal of the capital from Philadelphia was fixed for 1800.

The exact location of the federal district was left to President Washington, who was also charged with the appointment of commissioners to exercise executive jurisdiction over the territory, the laws of Maryland and Virginia being continued in force throughout the portions ceded by those states respectively. In 1846, Congress acquiesced in the action of the Virginia legislature retroceding the territory ceded by that state, thus reducing the area of the District of Columbia to its present size. The United States, however, now owns and occupies one-eighteenth of the retroceded area.

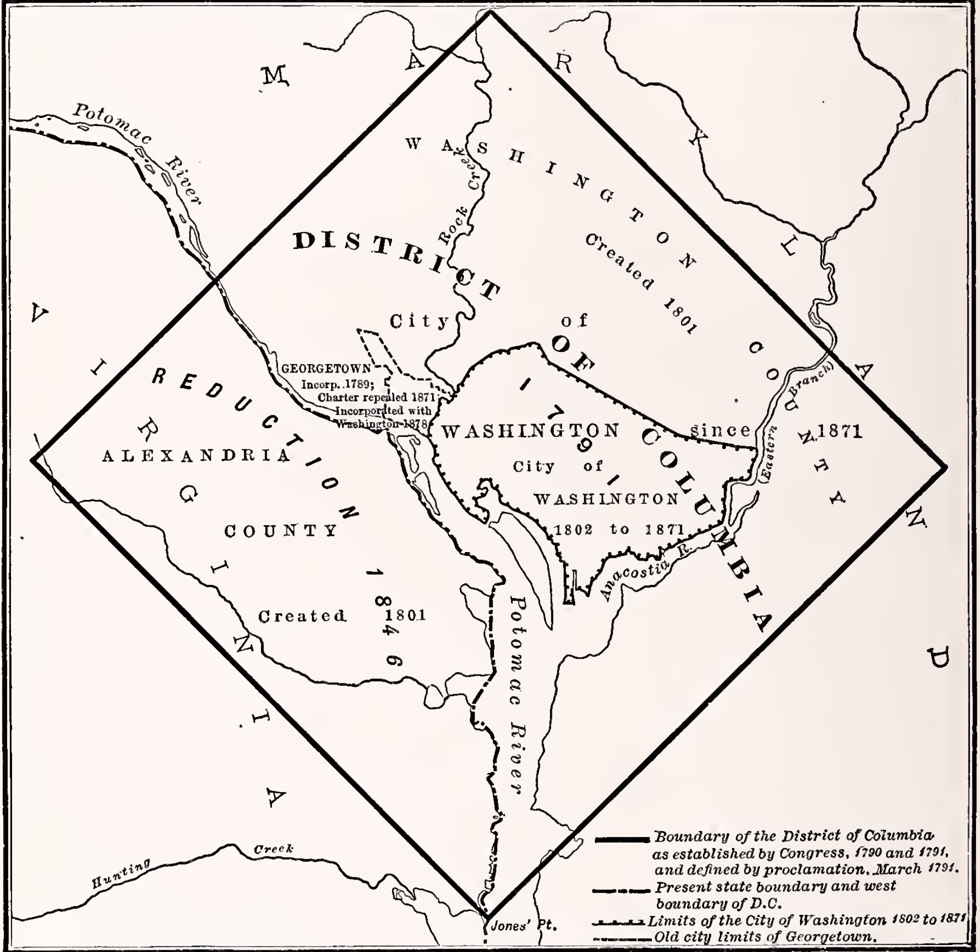
City Plan.—The plan for the federal city, comprising about sixteen square miles, was prepared under the immediate supervision of President Washington by Peter Charles L'Enfant, a young French engineer who had served in the continental army. Although for many years this plan was derided because of a magnificence that seemed impossible of realization, it has now come to be regarded as the most comprehensive and convenient plan ever designed for a capital city; and Congress has extended it throughout the District.

Early Government.—Originally both Georgetown and Alexandria retained their city governments, and Congress provided for Washington (as the capital came to be called) a local government consisting of a mayor appointed by the President, and a council, consisting of an upper and a lower chamber, elected by the people. There was a property qualification for the voter, but the principle of home rule was strictly guarded. By the act of February 21, 1801, a judicial system was created; and this act marks the date when Congress assumed exclusive control over the District. Residents of the District lost the right to vote at state and national elections.

President John Adams reached Washington on June 3, 1800; the executive offices, with a force of 136 clerks, were opened on June 7; and Congress assembled on November 15 of that year. The first session of the Supreme Court in Washington began on February 2, 1801. At that time neither Capitol nor President's House was finished, and only the Treasury Department had a home of its own. With minor changes, the original form of government was continued until after the War of Secession. That war made of the District of Columbia a great camp encircled by 37 miles of defenses, which a Confederate force under the command of General Early, in 1864, vainly endeavored to pierce.

Territorial Form of Government.—The rapid growth of the capital city during and immediately after the war made imperative a government suited to the changed conditions. In 1871 the entire system of local government was swept away; the charters of Washington and Georgetown were repealed and the District of Columbia was made a municipal corporation. Local authority was vested in a governor, a secretary, a board of health and a board of public works, all appointed by the President, with the advice and consent of the Senate; the President also appointed the members of one branch of the assembly, and the residents, without distinction of race or property-holdings, elected the members of the lower chamber, and also a delegate in Congress. The debt limit was fixed at 5 per cent of the assessed valuation, but might be increased by popular vote. In three years, the debt was increased to $20,000,000, or 25 per cent of the valuation. The money so raised was spent on grading and paving streets, the creation of a sewer system, and the establishment of a system of public charities. The era was one of municipal extravagance generally; and if the expenditures were more rapid in Washington than elsewhere, it can be argued that there the necessity was greater.

The leading spirit in the transformation of Washington from a straggling village into a modern city was Alexander R. Shepherd, at first the head of the board of public works, and afterward the governor. He defied or circumvented Congress and the judiciary in order to carry out schemes of public improvement; and during his administration speculation in city property again ran riot, as it had done during the early days when Robert Morris, Greenleaf and Thomas Law made and lost fortunes in Washington real estate. In 1874, Congress intervened with a special act in the interest of the taxpayers of the District, and abolished every vestige of the territorial form of government.



BOUNDARIES OF THE DISTRICT OF COLUMBIA, SHOWING TERRITORIAL CHANGES

Present Form of Government.—The "temporary" form of government adopted in 1874 was made "permanent" four years later. The right of suffrage was abolished completely. The President now (1913) appoints, for a term of four years, two commissioners, each of whom must be a resident of the District, who has not claimed residence elsewhere for five years preceding his appointment. Theoretically these two commissioners must belong to different political parties. A third commissioner is detailed from officers of the engineer corps of the Army, selected from among captains or officers of higher grade who have served for at least 15 years in that corps. Three junior officers are detailed to assist the engineer commissioner. The salary of each commissioner is $5,000 per annum. The commissioners exercise jurisdiction over all the ordinary functions of municipal government; and by special legislation they are empowered to make building, plumbing, police and other regulations for the protection of life, property, health, comfort and quiet of the people. The Chief of Engineers of the Army acts with the commissioners on the board of control of Rock Creek park, and also has charge of a majority of the public reservations and small parks. The engineer "officer in charge of public buildings and grounds," with the rank of colonel, has juris-

diction over certain of the public grounds, and of the improvement of Potomac park, and of the Mall. Another engineer officer has charge of the water supply, but the filtration and distribution of water remains with the commissioners. Thus the District has the advantage of an independent, highly trained engineering force to act as a board of public works. This system of District government has worked so satisfactorily that the only change seriously proposed is the concentration of authority in the person of a single commissioner, with the necessary assistants—a change which would probably secure for an office of such dignity a man of greater capacity than can be obtained under the present system of divided authority. A commission of fine arts consisting of seven non-resident architects, sculptors, painters and landscape architects, serving without compensation, acts as an advisory board in the matter of the placing and design of public buildings and monuments and the development of the park system.

The Budget.—The expenses of the District, amounting in 1912 to nearly $13,000,000, are paid directly from the United States Treasury, and all revenues are dopsited in the Treasury. The annual budget, prepared by the commissioners and revised by the Secretary of the Treasury, is transmitted to Congress, where it is handled by the committees on appropriations of the House and Senate, following the legislative course of other appropriation bills. One half of the sums appropriated by Congress is paid from the revenues of the United States on the theory that the Government owns one-half of the real property in the District. The other half is paid from the revenues of the District, which are derived from a tax fixed by the organic act at not exceeding $1.50 on each $100 of assessed valuation. Real property is assessed at about two-thirds of its cash value; and only tangible personal property in the District is assessed. The fact that taxation is thus limited and that credits are not taxed is one of the contributing causes of the rapid growth of Washington as a residence city. The street-railways and other public service corporations are taxed on their real estate and on their gross receipts. Franchises are perpetual, subject to the reserved power of Congress to alter, amend or repeal. The liquor law provides for a fee of $1,500 per annum after 1914, for limiting the number of saloons to 300, and for excluding saloons altogether from residence districts.

The form of government of the District of Columbia is often adverted to as a denial of democracy at the fountain-head. This is a superficial view. The people of the United States govern their capital city; Congress acts as both a legislature and a common council. The theory is that the capital exists primarily for the benefit of the citizens of the United States, and that its residents, being there only temporarily on the Government service, are citizens of one or another of the states and in those states may exercise the right of suffrage, including the right to vote for the rulers of the District. As a practical matter, there is probably no municipal government in this country where the opinions of the individual citizen have more influence on local government. The commissioners and the committees of Congress to which bills relating to District matters are referred hold hearings on every measure of local importance, and any person who desires to express an opinion is certain of consideration.

References: Columbia Hist. Soc., *Records* (1899), II; S. C. Busey, *Pictures of Washington in the Past* (1898), *Personal Reminiscences* (1895); W. V. Cox, "Celebration of the One Hundredth Anniversary of the Establishment of the Seat of Government in the District of Columbia" in *House Docs.*, 56 Cong., 2 Sess., No. 552 (1901); W. B. Bryan, "Bibliography of the District of Columbia" in *Sen. Docs.*, 56 Cong., 1 Sess., No. 61 (1900); W. Tindall, "Establishment and Government of the District of Columbia" in *ibid*, 56 Cong., 2 Sess., No. 207 (1901); W. F. Dodd, *Government of D. C.* (1909); P. L. Phillips, *List of Maps and Views of Washington* (1900); J. Bryce, *Am. Commonwealth* (4th ed., 1910); G. Hunt, "Locating the Capitol" in Am. Hist. Assoc., *Annual Report*, 1895, 287–295; Government reports on history of the Capitol, White House, Washington Monument, parks, charities, etc.

CHARLES MOORE.

DISTRICT SYSTEM AND GENERAL TICKET SYSTEM. Two diverse methods of choosing candidates to political office have been in use in the United States from early times. The district system divides the area to be represented into comparatively small sections, each, as a rule, electing but one representative. A law of 1842 made the single-member district plan obligatory in all states for the election of congressmen. By law or custom a member must reside in the district which he represents. This system has come down through centuries of political and social evolution and is sanctioned by the importance long placed upon local government. The intimate acquaintance possible within the small area, and the ready detection of fraud commend the plan. But it also meets with serious objections. While in colonial times, when suffrage was limited and political parties were wanting, the system sent able men to the assemblies, in later years under changed conditions it is believed to result in the choice of inferior men, and, by frequent changes of incumbents, to keep the making of laws in inexperienced hands. The ignorance and incapacity of legislators contribute to the power of the Speaker of the House and of the lobby maintained by the great corporations, while the system also promotes bribery, since

small factions often hold the balance of power between the parties.

The general ticket system ignores local divisions and chooses candidates from a larger area. Presidential electors, for example, are voted for by the whole state on the general ticket. Under the commission plan of city government (*sec*) all city officers, from the mayor down, are chosen by general ticket. Responsibility is thus fixed and greater efficiency secured than has been found possible when the members of the council are chosen by wards. This system does away with some of the abuses connected with the district system. In general it is calculated to widen the political horizon of the individual voter, to lift him out of his habit of "thinking in terms of local government," to develop a more intelligent, public-spirited citizenship and a higher standard of public service. From its larger constituency it may elect abler men to office and, in choosing presidential electors, the full force of the party majority can be given to its presidential candidate. The system also fails at several points to give due weight to the popular will. It confers undue power upon the more populous states in presidential elections; denies representation to the minority; under it temptations to fraud in "close" states become almost irresistible. Proportional representation has been proposed as a means of correcting these evils.

See Congress; Elections; Gerrymander; Proportional Representation.

References: J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, 42–43; J. A. Woodburn, *Am. Republic* (1903), 124–129; M. Ostrogorski, *Democracy and the Organization of Political Parties* (1902), II, 19; J. H. Dougherty, *Electoral System of the U. S.* (1906); J. R. Commons, *Proportional Representation* (1896); M. Ostrogorski, *Democracy and the Party System* (1910), 447–448. Jesse Macy.

DISTRICTS, CITY. Cities are generally divided into districts for purposes of administration, such as police, election, school, fire, sewer, park, and sanitary districts. Quite frequently the city is divided into districts for purposes of taxation, especially where special assessments are levied for public improvements, and where this is done, the tax rate varies in the several districts. Thus the park tax in Chicago and the school tax in Pittsburgh are not uniform in those cities. The charters generally establish the districts or confer the authority for their establishment. See Assessment of Taxes; Wards. References: F. J. Goodnow, *Municipal Government* (1910), 231–233; charters of the several cities. H. E. F.

DISTRICTS, RURAL ADMINISTRATIVE. The term as here discussed includes all rural administrative districts, other than county council, town, borough, village and school districts. Among these are election, fire, water, health, road, poor and other districts.

The election district is sometimes an entire town or township; but often more than one voting precinct is provided in a township or village. These are presided over by the election judges and clerks selected by the county board. They preside at all elections that may be held within the year. It is often the case especially in local option elections, that one side will have all the election officers.

Fire districts usually do not coincide as to any other boundary lines. Rules are made as to what fire companies shall respond to an alarm for a particular district. In the villages and smaller cities, the fire district is the same in extent as the village or city. The fire department of one village is often taken to the rescue of neighboring villages. There is a state fire marshal, whose chief work is to aid in the prevention of fires.

Water districts are usually the same as the village or city, and are usually controlled by the municipality. In irrigation states the water district may serve as an important administrative unit.

Health boards are usually county boards and have jurisdiction throughout the county with the care of preventing the spread of contagious diseases, and of securing satisfactory sanitary conditions.

Road districts form a good example of a poor system of administration. In some states, the county commissioners have jurisdiction if the amount involved is sufficient. Township trustees have another distinct set of powers, and within townships there are road districts, with a road supervisor either elected or appointed. His duties are to supervise the labor on the roads which must be performed by each male citizen between certain ages. This is perhaps the worst possible system of road building. The state legislature of Ohio until recently permitted cities and villages to require two days' labor on the streets. Some of the cities required it, and it has been used as a restriction on college students to keep them from voting in college towns.

The poor districts are of county or township extent. Sometimes both systems are found in the same state. There is a county infirmary; and the townships are bound to help persons not in the infirmary.

Small rural units are in general, unsatisfactory. They are too small, there is too much overlapping of authority, and there is usually too much crossing and recrossing of district lines.

See Rural Divisions, Minor; School District; Villages.

References: J. A. Fairlie, *Local Government in Counties, Towns and Villages* (1906); A. B. Hart, *Actual Government* (1908), ch. x; C. A. Beard, *Am. Government and Politics* (1910), ch. xxix. Thomas N. Hoover.

DIVINE RIGHT OF KINGS. The fashion is either to sneer or to laugh at the theory of the divine right of kings. That this theory is dead and buried we may concede. It should, however, be decently interred and remembered with respect. It served its purpose in its time and was no more fallacious than many another outgown notion. In its completest form the theory embraced these propositions: (1) Monarchy is divinely ordained. Though supported on rational and utilitarian grounds, the conclusive reason for its existence is the direct sanction of God. (2) Hereditary right is indefeasible. No usurpations, however long continued, can destroy the claims of rightful heirs. (3) Kings are accountable to God alone. They should rule uprightly; but if they do not, God, not man, shall punish. (4) Passive obedience is enjoined by God. Kings, good or bad, are instruments of divine purpose. Subjects who bow to their oppression bow to the wrath of God.

The theory was originated in the Middle Ages to support secular rulers against the church. It was based mainly on direct revelation: the anointing of Saul and David (I Sam. X, 1; XVI, 13); the disclaimer by Jesus of secular authority (Matthew XXII, 21, Mark XII, 17, Luke XX, 25); the injunctions of St. Peter and St. Paul (1 Peter II, 15–17, Romans XIII, 1–7). This was the view adopted by Bossuet to support the monarchy of Louis XIV. Philip the Fair of France and James I of England also took this ground. Filmer in his *Patriarcha* supported the theory as follows: The patriarchal authority of Adam was the only authority sanctioned by God's immediate bestowal. The early kings were merely the fathers of families. They enjoyed during their lives and passed on to their successors this divinely ordained patriarchal authority.

The theory never fully accounted for monarchical institutions. For instance the justification of primogeniture was never made clear. But a theory which stayed the progress of the Papacy toward universal temporal dominion is entitled to respect.

See POLITICAL THEORIES OF MODERN CONTINENTAL PUBLICISTS; POLITICAL THEORIES OF ENGLISH PUBLICISTS; SOCIAL COMPACT THEORY; STATE, THEORY OF.

References: W. A. Dunning, *Hist. of Political Theories Ancient and Mediaeval* (1908), 176–179, 225; *Hist. of Political Theories From Luther to Montesquieu* (1905), 215–217; J. N. Figgis, *Theory of the Divine Right of Kings* (1896). HENRY A. YEOMANS.

DIVISION. See following divisions of the executive departments of the Federal Government by name: APPOINTMENTS; BOOKKEEPING AND WARRANTS; CUSTOMS; LOANS AND CURRENCY; PRINTING AND STATIONERY; PUBLIC MONEYS; SPECIAL AGENTS.

DIVISION OF LABOR. Division of labor refers, *generally*, to the specialization of employments between social groups, different localities, different industries; *specifically*, to the specialization of employments within each industry or occupation. In the last sense, division of labor narrows and simplifies the process performed by each person. This results in greater efficiency, because it (1) increases the skill of laborers, (2) avoids loss of time in changing processes, (3) utilizes most effectively the special aptitudes of laborers, (4) utilizes most efficiently tools and machines, (5) facilitates the invention of machines to execute the simplified processes—recently a fact of revolutionary effect. The scope for division of labor is restricted by the nature of some occupations (agriculture). It is greatest in manufacturing industries—*e. g.*, 1,088 different sets of workmen coöperate to make fine watches. It also depends vitally on facilities for transport, reduction of prices, rise of wages, and other factors which enlarge the market for products.

Division of labor may be detrimental to the laborer, because: (1) the intensity and monotony of incessantly repeating the same simple process has a deadening or distorting effect on his faculties and organs; (2) a position of greater dependence results from his ability to make only a fraction of a product and consequent liability to displacement by a new machine, tended perhaps by woman or child labor; (3) resulting large scale production usually causes unwholesome congestion of population in industrial centers. But against these disadvantages must be set: resulting greater abundance of goods accessible to laborers; the possibility of a shorter labor day; release from processes involving the worst muscular strain and monotony by the application of machinery; increasing the exercise of higher faculties in using new machines and methods; better sanitation and regulation of large establishments; urban opportunities for economy and efficiency in using social agencies for education and improvement.

See PRODUCTION.

References: A. Marshall, *Principles of Economics* (6th ed., 1910), Bk. IV, chs. ix–xiii; G. Schmoller, "Die Tatsachen der Arbeitsteilung" and "Das Wesen der Arbeitsteilung" in *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft* (1889–90); *ibid, Gundriss der Allgemeinen Volkswirtschaftslehre,* I (1908), 344–393. E. H. VICKERS.

DIVISION OF POWERS. By political scientists the powers of government are usually divided into three classes—legislative, judicial and executive—the first being the power to create law by the issuance of commands which are legally binding; the second being the power to determine what is the law applicable to given sets of facts, which of course, where the law is statutory, involves the power of inter-

preting the language in which it is stated; and the third, the power of enforcing or carrying into effect the commands of the state as legislatively declared and judicially determined. Under the constitutional system of the United States, in the states, as well as in the Federal Government, the exercise of each of these powers is entrusted to different persons or governmental organs. See SEPARATION OF POWERS.
W. W. WILLOUGHBY.

DIVISIONS. It is the right of any member of a legislative body to question the correctness of the speaker's decision upon the result of a vote, and to demand a division. In the House of Commons when a division is demanded the speaker appoints two members on each side, as tellers to count the house. The members of each party then retire to a lobby and are counted by the tellers as they reënter. In the legislative bodies of this country, the common method of taking a division is to require the members voting in the affirmative to rise in their seats when they are counted. In the same way those voting in the negative are then counted. If the presiding officer is still in doubt, or a count is required, he names a teller from each side to count first those in the affirmative, and then those in the negative. In "telling" the house, the tellers take their stand in front of the speaker's chair and those voting in the affirmative pass between them, after which those voting in the negative do likewise. According to the rules of the national House of Representatives, a division and count can only be demanded by at least one fifth of a quorum, (Rule I, Sec. 5). See PARLIAMENTARY LAW; QUORUM; VOTING IN LEGISLATIVE BODIES. **Reference:** A. C. Hinds, *House Manual* (1909). J. W. G.

DIVORCE. See MARRIAGE AND DIVORCE.

DIX, DOROTHEA LYNDE. Dorothea Dix (1802–1887), army nurse, philanthropist, and reformer, was born at Hampton, Me., April 4, 1802. The inheritance, in 1830, of a modest fortune left her free to study the condition of jails, asylums, and almshouses, and to agitate for their betterment. In the prosecution of this work she travelled widely in the United States and Europe. She was largely responsible for the establishment of state hospitals for the insane in New York, Pennsylvania, Illinois, and other states; but a bill granting to the states 10,000,000 acres of public lands to aid them in caring for their insane, passed by Congress in 1854, was vetoed by President Pierce. During the Civil War she was superintendent of Army hospital nurses, resuming after the war her work for the insane. She died at Trenton, N. J., July 19, 1887. See INSANE, PUBLIC CARE OF. **References:** F. Tiffany, *Life of Dorothea Lynde Dix* (1890).
W. MACD.

DOCKS AND WHARVES, PUBLIC. The United States Government dredges, maintains, buoys and lights the channels connecting ocean and lake ports with deep water; and, within each harbor, establishes the "pier-head line" to which the wharves may extend from the shore. The states have authority over docks and wharves.

The administration and the construction of port facilities may either be retained by the state and be in charge of a state board, or they may be entrusted to the municipal government of the port. In New York City and Philadelphia, port administration is vested in a department of the city government; in Boston, New Orleans and San Francisco, in state boards.

The ownership of the land fronting upon the harbor and of the wharves and other port facilities may either be private or public—the owners may be individuals and corporations or the city or the state. Private ownership obtains in most of the ports in the United States. At only two of the fifty leading ports—New Orleans and San Francisco—is public ownership nearly complete.

Wharves built by the state or city may either be operated as "open" piers for the accommodation of general traffic, or they may be leased for a period of years to corporations at an annual rental. The prevailing policy in the United States has been to lease the public piers to carriers and shippers.

See HARBOR SYSTEMS; REAL ESTATE, PUBLIC OWNERSHIP OF.

References: Commissioner of Corporations, "Water Terminals" in *Report on Transportation by Water in the United States* (1910), Part III; E. R. Johnson, *Ocean and Inland Water Transportation* (1906); *Am. Year Book, 1911*, and year by year. EMORY R. JOHNSON.

DOG TAX. See TAX, DOG.

DOLLAR DIPLOMACY. A term current in the newspaper press since about 1909 which signifies the alleged attempt of the United States Government, through its diplomatic agents, to gain for American firms an increased foreign trade, for American manufacturers a larger share of the foreign market, and for American capitalists greater opportunity for profitable investment. It has been applied especially to the negotiations of the United States Government to secure for American citizens loans to foreign governments. See INTERNATIONAL LAW, INFLUENCE OF THE UNITED STATES ON. **References:** A. B. Hart, "The New Holy Alliance," in *Jour. of Race Development*, III (1913), 255–267; *Am. Year Book, 1911*, 66.
O. C. H.

DOLLAR OF OUR DADDIES. Term applied during silver controversy of 1873–1896 to the silver dollar authorized under the original

coinage act of 1792. Advocates of free coinage of silver relied, for one of their arguments, upon an appeal to a patriotic adherence to the supposed monetary system established by the fathers of the republic. See COINAGE AND SPECIE CURRENCY; CRIME OF '73; SILVER COINAGE CONTROVERSY. D. R. D.

DOMICILE. The place in which one has his regular and permanent place of abode, and to which, when temporarily absent, he intends to return. The term is not synonymous with residence or abode, though popularly so used. H. M. B.

DOMICILE AND RESIDENCE. Residence, strictly speaking, means simply personal presence in a fixed and permanent, as against a temporary, abode. It is, however, frequently used as synonymous with domicile which implies, in addition to residence as just defined, an intention of returning whenever absent. The words, inhabitant and resident, as used in constitutions in connection with qualifications for suffrage, have been considered as practically synonymous.

Residence is required for many purposes, notably for the exercise of political privileges. In practically every state the suffrage is by the constitution made dependent upon residence in the state for a certain period before election. A few states require, in adidtion, residence in the United States for a certain period. Many require residence in the county, city, town, precinct, ward or election dictrict for a specified period just preceding election. Different states vary greatly in their definition of the circumstances under which residence may be gained or lost. Most states agree, however, that residence is not to be gained by reason of being stationed in the state while in the military or naval service of the United States, nor to be lost for absence on such service.

Some constitutions contain explicit statements about the residence of office-holders. The Constitution of the United States, for example, requires that Senators and Representatives shall be "inhabitants" of the state in which they are chosen (Art. I, Sec. ii, ¶2; Sec. iii, ¶ 3), while the President must have been fourteen years a "resident" within the United States (Art. II, Sec. i, ¶ 5). Illinois, Missouri, and Montana require residence in the state for one year as a qualification for holding any office. Usually there is special provision in regard to more important officers. The governor and lieutenant-governor are frequently singled out. Thus Louisiana requires that these officials shall have been residents in the state for ten years next preceding election. In New York five years is required. In many states the judges are specially provided for, as in Illinois, which has a five year residence qualification for these officers. Sometimes there is a special residence qualification for legislative officers. Thus in Kentucky representatives must have resided in the state two years, senators six years.

The Fourteenth Amendment provides that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." It is plain that mere temporary residence would not make a person a citizen of the state as the words are used in the Amendment; here the word residence must be considered equivalent to domicile. The Constitution gives the federal courts jurisdiction in suits between citizens of different states; the mere averment of residence in a state is not an averment of citizenship (Steigleder *vs.* McQuesten, 198 *U. S.* 141), for the purposes of jurisdiction.

See CITIZENSHIP; QUALIFICATIONS FOR OFFICE; SUFFRAGE.

References: F. N. Thorpe, *Federal and State Constitutions* (1909), *passim;* F. J. Stimson, *Federal and State Constitutions of the U. S.* (1908), 210, 220-222; T. M. Cooley, *Constitutional Limitations* (7th ed., 1903).

A. C. McL.

DOOMING OF TAXES. See TAXES, DOOMING OF.

DORR, THOMAS WILSON. Thos. W. Dorr (1805-1854), was born at Providence, R. I., November 3, 1805. In 1827 he was admitted to the bar, and from 1834 to 1837 was a representative from Providence in the general assembly. Under the Rhode Island charter of 1663 many of whose provisions were still observed, although the charter itself was no longer in force, the suffrage was limited to freeholders and their eldest sons. Demands for reform, strongly urged by the cities and large towns in 1824 and 1830, were stubbornly resisted by the small towns, which controlled the assembly. Dorr became the leader of the People's, or Suffrage party, in opposition to the Landowner's, or Law and Order party. In December, 1841, a new constitution framed by a People's convention in October, and voted on by adult male citizens of one year's residence, was adopted, and in April, 1842, Dorr was chosen governor. When the regular assembly at Newport declared the Dorr government at Providence illegal, Dorr seized the state house, but failed in an armed attempt to secure the arsenal. Governor King proclaimed martial law and invoked federal aid. In June, Dorr's forces at Chepachet were dispersed, and Dorr fled. Returning to Providence early in 1844, he was arrested, tried and convicted of treason, and sentenced to imprisonment at hard labor for life. He was released in 1845, and in 1854 the judgment against him was annulled by order of the assembly. He died at Providence, December 27, 1854. See INSURRECTIONS; RHODE ISLAND. References: E. Field, *Rhode Island* (1902), I; A. M. Mowry,

Dorr War (1901); I. B. Richman, *Rhode Island: A Study in Separatism* (1905), ch. xiv.
W. MacD.

DORR REBELLION. Until the adoption of the Rhode Island constitution of 1842, suffrage in that state was restricted to landowners and their eldest sons. After repeated attempts to secure a constitutional convention, the general assembly, hitherto controlled by the smaller towns, finally called a convention for November, 1841. As the vote on the constitution would be limited to the old electorate, a people's, or suffragist, constitution was drafted by an irregular convention led by Thomas W. Dorr, and, in December, was adopted. Dorr was elected governor, but failed to maintain possession of the state house. Governor King invoked federal aid, and in June, 1842, Dorr's forces, after a feeble attempt at resistance, melted away. The landowner's constitution had been voted on in March, and rejected. In November the present constitution (1913) was agreed upon by convention, and ratified by the people. **See** Dorr, Thomas W; Luther vs. Borden; Rhode Island; Suffrage Party. **Reference:** I. B. Richman, *Rhode Island* (1905), 280–300; A. M. Mowry, *Dorr War* (1901).
W. MacD.

DOUBLE CITIZENSHIP. The Fourteenth Amendment to the Federal Constitution declares that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." This indicates the existence of a two-fold citizenship; and it raises a theoretical question of considerable difficulty. If there is only one state, *viz.*, the United States, can there be two citizenships? Progessor Burgess, pointing to the confusion of thought which he declares prevails wherever a federal system of government exists, attributes it to a failure to distinguish between the state and the two governments. "The individual," he says, "is not a citizen of either *government*, but of the state back of both." But the principle of double citizenship is fully established in American constitutional law, and the practical difference between it and the one which may possibly have theoretical accuracy on its side is not great. In the Slaughter House cases (*see*) the court said: "There is a citizenship of the United States and a citizenship of a State, which are distinct from each other, and which depend upon different characteristics and circumstances in the individual." In this connection the court refers to the "difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the state as such." Citizenship in the state, it would appear, cannot be given to an alien; but a naturalized citizen becomes a citizen of the state wherein he resides. The right to naturalize belongs to the Federal Government; but the state can, as some of them have done, grant extensive privileges of state citizenship, even the suffrage, to foreigners not fully naturalized. **See** Citizenship; United States as a Federal State. **References:** J. W. Burgess, *Pol. Sci. and Constitutional Law* (1891), I, 218–232; W. W. Willoughby, *The Constitutional Law of the U. S.* (1910), 260–274, *The Am. Constitutional System* (1904), ch. xv.
A. C. McL.

DOUBLE TAXATION. **See** Taxation, Double.

DOUBTFUL STATES, PARTY SYSTEM IN. **See** Party System in Doubtful States.

DOUGH-FACE. A name first applied by John Randolph in the Missouri Compromise (*see*) discussion in Congress to the eighteen northern representatives who voted with the South on the compromise bill, thereafter applied to a northern man with southern principles and a northern man willing to make concession to the South for the sake of preserving peace. **See** Slavery Controversy.
O. C. H.

DOUGLAS, STEPHEN ARNOLD. Stephen A. Douglas (1813–1861) was born at Brandon, Vt., April 23, 1813. In 1834 he was admitted to the Illinois bar, and practiced at Jacksonville and Springfield. He became an ardent supporter of Jackson, and rose rapidly to political importance. He was attorney general of Illinois in 1835, register of the land office in 1837, secretary of state in 1840, and judge of the supreme court in 1841. In 1843 he was elected to Congress, served two terms, and was then elected to a seat in the United States Senate which he held until his death in 1861. He favored the annexation of Texas, the Mexican War, and the full claims of the United States to Oregon. In the debate on the Compromise of 1850 he discussed, though he did not originate, the theory of popular sovereignty; while as sponsor for the Kansas-Nebraska Act of 1854, he applied the theory to the overthrow of the Missouri Compromise, thereby arraying against him the anti-slavery sentiment of the North. He opposed the Lecompton Constitution which caused a break with Buchanan and the southern Democrats. His famous debates with Lincoln occurred in 1858, when he was a candidate for reëlection to the Senate. In 1860 he was nominated for the presidency by the Union Democrats, and received a heavy popular vote, but only twelve electoral votes. He denounced secession, and pledged his support to Lincoln. He died at Chicago, June 3, 1861. **See** Anti-Lecompton Democrats; Freeport Doctrine, Kansas Struggle; Lincoln, Abraham; Senate of the United States; Slavery Contro-

VERSY. References: J. W. Sheaham, *Life of Stephen A. Douglas* (1860); W. G. Brown, *Stephen Arnold Douglas* (1902); A. Johnson, *Stephen A. Douglas* (1908); C. E. Carr, Douglas (1908); C. E. Carr, *Stephen A. Douglas, Life, Public Services, Speeches and Patriotism* (1909). W. MacD.

DOUGLASS, FREDERICK. Frederick Douglass (1817–1895), was born at Tuckahoe, Talbot County, Md., in 1817, the son of a white father and a mulatto slave mother. He learned to read and write, and in 1838 escaped to New York, but presently removed to New Bedford, Mass., where he worked in the ship-yards. A speech at an anti-slavery convention at Nantucket, in 1841, showed him to be possessed of marked oratorical power, and led to his employment as an anti-slavery lecturer by abolition societies in Massachusetts and elsewhere. In 1845 he went to England, where friends provided means to purchase his freedom. Returning to America in 1847, he settled at Rochester, N. Y., where until 1863 he published the *North Star*, a journal whose name was later changed to *Frederick Douglass's Paper*. During the Civil War he was active in promoting the enlistment of negroes. In 1871 he became assistant secretary to the San Domingo commission, and on his return was appointed a member of the short-lived territorial council of the District of Columbia. In 1877 he was made marshal for the district, was recorder of deeds from 1881 to 1886, and from 1889 to 1891 minister to Hayti. He died at Washington, D. C., February 20, 1895. See SLAVERY CONTROVERSY. References: F. Douglass, *Life and Times* (rev. ed., 1893); C. W. Chesnutt, *Frederick Douglass* (1899). W. MacD.

DOW, NEAL. Neal Dow (1804–1897), temperance reformer, was born at Portland, Maine, March 20, 1804. He took a prominent part in the temperance crusade which grew rapidly in strength after 1830; and in 1851 secured the passage of the "Maine law," under which restrictive measures of 1846 and 1848 were replaced by absolute prohibition of the manufacture or sale of alcoholic liquors, save for medicinal purposes. In the same year he was elected mayor of Portland, and was reëlected in 1855. He travelled in England in 1857, lecturing on prohibition, and in 1858–59 was a member of the Maine legislature. At the outbreak of the Civil War he was commissioned as colonel, and was later made a brigadier-general. In 1866, and again in 1874, he visited England in the interest of the prohibition movement, and in 1880 was nominated for the presidency by the Prohibition party. The climax of his work was reached in 1884, with the adoption of a prohibitory amendment to the Maine constitution. He died at Portland, October 2, 1897. See PROHIBITION. Reference: Neal Dow, *Reminiscences* (1898). W. MacD.

DRAFT RIOTS. The draft is the forced enlistment of men to serve in the armies of a country. Congress passed a Conscription Act (*see*) in May, 1863, under the provisions of which the ranks were to be kept filled. At different places there was much opposition to the draft, especially on the part of Democrats and foreigners. Many believed that troops should be raised only by volunteering, and that the conscription acts were unconstitutional. The greatest opposition to the enforcement of this act was in the city of New York, which for several days in July, 1863, was at the mercy of a mob. The drawing of names began on July 11, Saturday. There were rumors of outbreaks, but none occurred. Sunday was a day of dissatisfaction. The trouble brewed rapidly, and broke forth on Monday. After a hundred names had been drawn, a mob of a thousand, made up largely of classes unable to pay the exemption, attacked the room, drove the provost-marshal away, and set fire to the building. Many other buildings were burned. Negroes and abolitionists were the special objects of the fury of the mob, many of the former being killed. The next day, July 14, the mob was joined by thieves and ruffians and pillage and robbery were added to the work of destruction. On the next day, the draft was temporarily suspended in New York and Brooklyn. This, with the arrival of troops, helped to quiet the mob. Rioting ceased on July 16, after one thousand had been killed or wounded, and a million and a half dollars worth of property had been destroyed. Governor Seymour requested President Lincoln to suspend the draft, but he refused to do so. With a large force of troops on hand, the draft was quietly resumed in New York on August 19, 1863.

See CONSCRIPTION AND DRAFT.

References: J. F. Rhodes, *Hist. of U. S.* (1893–1906), IV, 320–332; J. K. Hosmer, *Outcome of Civil War* (1907). T. N. HOOVER.

DRAFTING OF LEGISLATION. There has been much just cricitism, from a purely technical standpoint, of the laws passed by American legislatures. Many ludicrous and many serious examples of loose and faulty drafting of statutes may be found. It has frequently resulted that through ignorance or haste a statute has been so drawn as to accomplish exactly the opposite of what was intended. Important regulative acts are often made most obscure and involved through lack of careful and skilled attention to form and phraseology, with the result of needless litigation. To draft a statute involving new principles of control without its being liable to overthrow or restrictive interpretation by the courts is hardly possible under our system of judicial control. But by careful and expert attention to form and phraseology it is almost always possible to state the intent of the act clearly

and unmistakably, and at the same time fit it safely into the existing body of law without unintentionally endangering or destroying other statutory provisions. Considering the number of laws passed at each session in many states, the shortness of the session, the difficulties due to constitutional requirements and restrictions, the complicated condition of the body of statute law and the absence in most cases of expert assistance, the wonder is that the product is no worse.

A considerable proportion of the bills introduced are not prepared by the members of the legislature, but are "handed to" the members from various sources with a request for their introduction. They may be drafted by city attorneys, by city or state departments, by civic associations or by one of the numerous bodies devoted to the accomplishment of some specific reform requiring legislation, or by a state or national association representing some business, trade or profession. Then corporations, firms and individuals present bills, many of which have been carefully and cleverly drafted by special attorneys to serve speeial ends. The members themselves, of course, draft many of the bills though their qualifications for such work are often poor or entirely lacking; and in any case they have rarely sufficient time during the stress of the session to do this work properly.

In Connecticut, by acts of 1882 and 1895, the legislature created the office of clerk of bills whose duty it is to assist members and committees in the drafting of bills of a public nature; and every bill favorably acted on by a committee must, before being reported be examined by this clerk "in respect to its form, for the purpose of avoiding repetitions and unconstitutional provisions and insuring accuracy in the text and references, clearness and conciseness in the phraseology, and the consistency of statutes." Recent governors of Connecticut state that this law has not accomplished what was intended owing to a lack of proper qualification in men selected and the very short tenure of office. In South Carolina and in one or two other states the attoney general or a special clerk has been authorized to assist in the drafting of bills. In New York three bill drafters are appointed and usefully assist the members and committees. The legislative reference bureaus (*see*), recently established in many states, usually include among their functions the drafting of bills at the request of members or committees. What is really needed is the recognition of bill-drafting as a profession, and possibly the enforcement of a requirement that all bills before being reported shall be referred to the official draftsman for a report as to their form and phraseology.

See Legislative Reference Bureau.

References: J. G. Sutherland, *Statutes and Statutory Construction* (1905); Librarian of Congress, "Report Relative to Legislative Reference Bureaus" in *Sen. Docs.*, 62 Cong., 1 Sess., No. 7 (1911); J. A. Lapp, "Hints on Bill Drafting" in Indiana State Library, *Bulletin*, No. 4 (1908); E. Freund, "Problem of Intelligent Legislation," in Am. Pol. Sci. Assoc., *Proceedings*, IV (1907), 69–79; P. S. Reinsch, *Readings on Am. State Gov.* (1911), 63–74; C. A. Beard, *Readings in Am. Government and Politics* (1911), 266–269, 473–474.

Robert H. Whitten.

DRAINAGE. Drainage is the problem of getting rid of surplus water; while sewage (*see*) according to Rafter and Baker, is the generic term for the combined water and waste matter flowing into sewers, and for the mixed solid and liquid matter handled by a pail or pneumatic system. It is used in contradistinction to sewerage, which is the process of removing the solid and liquid waste of the human economy by water carriage. In most cities drainage and sewage are carried off through a network of under-ground pipes and conduits frequently quite as extensive as those of a water-works system. From these it is discharged into tidal or other large bodies of water, although in many communities the water is evaporated and the solid contents which remain are used as fertilizers or fillers, according to their character.

The old-fashioned method of disposing of drainage was through surface gutters, a method still followed in a few cities, to the detriment of the health of the community; and in freezing weather to the danger of life and limb. Drainage through adequate sewers within the past quarter of a century has come in most cities to be regarded as an indispensable municipal function. In most American cities this duty is definitely assumed by the city, as experience has shown that inasmuch as extensive plants and extensive means of distribution are essential, the best results are attained by a direct supervision and maintenance rather than through private parties working under contract. New Orleans has been one of the few large cities to have a privately owned sewer system. See Health, Public, Regulation of; Sewers and Sewerage; Water Supply. References: A. P. Folwell, *Sewerage* (1910); A. A. Houghton, *Concrete Bridges, Culverts and Sewers* (1912); Rafter and Baker, *Sewage Disposal in the United States* (1908), *Municipal Engineering and Sanitation* (1902); H. S. Watson, *Sewerage Systems, their Design and Construction* (1911). Clinton Rogers Woodruff.

DRAGO DOCTRINE. Enunciation.—On December 29, 1902, the Argentine Government, through its minister of foreign Affairs, Louis M. Drago, addressed a note to the Government of the United States on the dispute at that time in progress between Venezuela and the governments of Great Britain, Italy and Ger-

many. The controversy involved the nonpayment of amounts due on various classes of obligations, among these certain interest payments on the Venezuelan foreign debt. The minister of the Argentine contended that the collection of such debts by force was not justified for two reasons. First, every capitalist who lends money to a foreign government always takes account of the resources of the borrowing country and of the probability that the debt will be collectable without difficulty. Each government, therefore, enjoys a different credit and it would be unjust to let the capitalist exact a high rate of interest because the debt might remain uncollected and at the same time hold that force could be used to assure payment. Secondly, the creditor recognizes that he is dealing with a sovereign against whom no executory procedure is possible. The equality of states, a fundamental principle of international law, prevents any suit in court against a sovereign without his consent.

If these contentions be correct, it is argued, then the acknowledgment of a public debt and the payment of the interest charges must be left entirely in the hands of the debtor state. Such has been the standard for which American states have uniformly contended. If blockades, bombardments and capture of national vessels, such as had occurred in the Venezuelan episode, be allowed, it would break down consistent American practice and constitute a serious modification of the Monroe Doctrine, the most characteristic feature of American foreign policy. The use of force to secure payment of public debts by the American republics could not but be an effort "to oppress them or control their destinies." Argentine history, it was pointed out, indicated the advisability of leaving public debt payments to the conscience of the debtor and the belief was asserted that the acceptance of this principle would not prove a cloak for bad faith. The doctrine advocated is epitomized thus: "In a word the principle which the Argentine Republic wishes to see recognized is that public debt cannot provoke armed intervention, much less actual occupation of the territory of the American nations on the part of a European power."

Discussion.—The question raised was not new to international lawyers, but there was no definite rule of theory or practice. The United States had uniformly stood in favor of nonaction by the Government in such cases. England, in 1848, and again in 1880, had adopted the same practice though declaring that the right to interfere was undoubted. Some authors, like Rivier, held it an imperative duty of a state to protect the foreign loans of its nationals while others, notably the Argentine jurist Calvo, sustained even a broader argument than that advanced by Señor Drago.

Evidently, as brought forward by Señor Drago, the doctrine was not considered as expressing a rule of international law, but a declaration of policy—an amplification or corollary of the policy declared by the United States in the Monroe Doctrine. Unlike the latter, however, the Drago doctrine contains a principle which can be generalized—it is not subject to geographical limitation. Since the principle was already advocated by one group of writers on international law it was natural that those who believed in its justice should urge the definite expression of the rule by international conferences as one of law in contrast to the Monroe Doctrine which, from its nature, remained a declaration of policy.

Pan American Conference of 1906.—Secretary of State Elihu Root, on March 22, 1906, addressed a letter to the commission charged with drawing up the programme for the third Pan American conference to be held at Rio de Janeiro, in which he suggested that the commission include in the program the discussion of instructions to the delegates to the second Hague conference to be held the following year. One of the subjects to be covered by the instructions, he suggested, should be the opinions of the American governments as to the use of force in the collection of public debts. The commission recommended "that the Second Peace Conference at the Hague be invited to examine, if or to what degree the use of force is admissible for the recovery of public debts." The delegates of the United States to the Rio conference were cautioned that it would be inadvisable for the conference to draft the principle into a rule since, most of the American nations being creditor states, such an action would appear like a judgment by the debtors as to what was owed to the creditors. By referring the matter to the Hague, however, both parties would be brought into the agreement. In fact European criticism had already been raised against the phrasing used in the programme drawn up by the commission; and when the committee appointed by the Rio conference itself, to consider the question reported, the proposal read as an invitation "to the second Peace Conference to examine the question of the forcible recovery of public debts and in general the means tending to diminish among the nations conflicts of exclusively pecuniary origin."

Hague Conference of 1907.—At the Hague, on July 2, 1907, General Horace Porter, a delegate from the United States, introduced a proposition which, with amendments and modifications chiefly introduced by the South American representatives, became a part of the final act of the conference on October 18, 1907. The important part of the convention reads:

Article I. The Contracting Pawers agree not to have recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country as being due to its nationals.

This undertaking is, however, not applicable when the debtor state refuses or neglects to reply to an offer of arbitration, or after accepting the

offer prevents any *compromise* from being agreed on, or, after the arbitration fails to submit to the award.

The convention was accepted by all the forty-four states represented at the conference except Belgium, Roumania, Sweden, Switzerland and Venezuela, whose representatives abstained from voting. It has, up to the present time, been ratified by all the states whose representatives voted favorably with the exception of Brazil, China, Luxemburg, Nicaragua and Siam. In some cases, however, the ratification has been accompanied by reservations.

See ARGENTINA; BRAZIL; CENTRAL AMERICA, DIPLOMATIC RELATIONS WITH; CHILI; CLAIMS, INTERNATIONAL; FOREIGN POLICY OF THE UNITED STATES; HAGUE CONFERENCES; HAYTI, DIPLOMATIC RELATIONS WITH; INTERNATIONAL LAW, INFLUENCE OF THE U. S. ON; MEXICO, DIPLOMATIC RELATIONS WITH; MONROE DOCTRINE; PAN AMERICAN CONGRESSES; PROTECTION OF CITIZENS ABROAD; SAN DOMINGO; DIPLOMATIC RELATIONS WITH; SOUTH AMERICA, DIPLOMATIC RELATIONS WITH; STATES, EQUALITY OF; VENEZUELA.

References: L. M. Drago, *La Republica Argentina y el caso de Venezuela* (1903); A. H. Fried, *Die zweite Haager Conferenee* (1908); A. Gaché, *Le Conflict Venezuelien et a l'Arbitrage de la Hage* (1906); G. de Quesada, *Arbitration in Latin America* (1907); W. I. Hull, *Two Hague Conferences,* (1908); J. B. Scott, *Texts of the Peace Conferences* (1908); J. H. Latané, *America as a World Power* (1907), chs. xv, xvi, "Forcible Collection of Public Debts" in *Atlantic Monthly* (Oct., 1906); H. A. Moulin, *La Doctrine de Drago* (1908); A. S. Hershey, "Doctrines of Calvo and Drago" in *Am. Journal of Int. Law* (Jan., 1907); G. W. Scott, "Int. Law and the Drago Doctrine" in *North Am. Rev.*, CLXXXIV (1906); C. Kennedy, "Drago Doctrine" in *North Am. Rev.* (July, 1907); L. M. Drago, "State Loans in Their Relation to Int. Policy" in *Am. Journal of Int. Law* (1907), 692.

CHESTER LLOYD JONES.

DRED SCOTT CASE. The essential facts of this famous case (Scott *vs.* Sanford, 19 *Howard* 393), decided by the United States Supreme Court, March 7, 1857, are as follows: Dred, a slave, was taken by his master, Emerson, from Missouri, first into Illinois, thence into free territory under the Missouri Compromise (*see*), and finally back to Missouri. Dred first sued for freedom in the state courts, but having passed, while this action was pending, to Sanford, a citizen of New York, he brought a new action in the United States circuit court in a pretended capacity as a citizen of Missouri. The circuit court, on the merits of the case, found for Sanford and Dred appealed to the United States Supreme Court. Here the case was twice argued and even after the second argument it was originally the intention of the court simply to affirm the lower court's decision. Eventually, however, Chief-Justice Taney (*see*) was induced to write "the opinion of the court" covering all issues that had been raised. In this opinion Taney treats the question before the court as that of the circuit court's jurisdiction, which he denies upon two grounds: First, that of Dred's descent from African slaves and birth in slavery; second, that of his existing servitude. Dred's servitude is also placed upon two grounds: first, that after Dred reëntered Missouri, Missouri law controlled; second, that the Missouri Compromise was unconstitutional. It is usual to represent the second part of Taney's opinion as dictum, because unnecessary to the determination of the issue. It is doubtful, however, whether this is a correct notion of dictum. On the other hand, Taney's view of the law is open to serious attack. The Missouri Compromise was void, he held, under the Fifth Amendment, but at this point not only does he carry with him only two of his associates, but by Justice Curtis he is conclusively refuted. Three other justices stigmatize the compromise as unconstitutional, but, usually, upon the basis of Calhoun's doctrine, first set forth in 1847, that in the territories the National Government was the mere agent of the states. On the citizenship question Curtis is equally convincing. The issue between him and Taney was whether a state was competent to confer upon natives citizenship within the recognition of the United States Constitution. This Taney denied, but the contrary was the older view. See SLAVERY CONTROVERSY; TERRITORIES, ORGANIZED. **References:** J. F. Rhodes, *Hist. of the U. S.*, II (1893), 251–278; J. G. Nicolay and J. Hay, *Abraham Lincoln, A History* (1890), II, ch. iv; E. S. Corwin, "The Dred Scott Case" in *Am. Hist. Review*, XVII (1911), 52–69; E. W. R. Ewing, *Legal and Historical Status of the Dred Scott Decision* (1909).

E. S. CORWIN.

DRUGS, PUBLIC REGULATION OF. The drug trade is greatly embarrassed by want of uniform national and state laws. Many state statutes have been enacted and the first national law regulating the importation of drugs and chemicals was enacted in 1848 because of public pressure. This federal act of June, 1848, was followed by the National Food and Drugs Act, of June 30, 1906, by which drugs in general are held to be adulterated if they differ from the recognized standard laid down by the United States Pharmacopoeia or National Formulary, or if they differ from the professed standard under which they are sold. Drugs are misbranded when the packages bear any statement that is false or misleading, which has been construed by the Supreme Court to refer only to statements as to the composition. The administration of the act has been vigorous, but the law is notably weakened by prose-

cution against such proprietary medicines as admit of doubt regarding their adulteration or misbranding.

Notwithstanding that the law provides that the quantity of any opium, cocaine, morphine, chloroform, eucane, hasheesh, alcohol or other poisons must be plainly stated on a package, those drugs are sold in large quantities, by traveling venders and patent-medicine fakers. Large quantities of opium and other "habit-forming agents" are used in spite of state and federal laws. Essential oils and botanic drugs are largely adulterated.

Drug inspection is carried on similarly to food inspection. Government agents are authorized to take samples; these are analyzed by the United States Bureau of Chemistry and if unlawful ingredients are found, the solicitor brings suit *vs.* the manufacturer or distributor. Bulletins giving the result of such trials are issued and may be obtained from the United States Department of Agriculture. The Supreme Court of the United States in the "cancer-cure case" held that the manufacturer of a patent medicine could not be convicted of misbranding for making claims for his medicine not admitted by the doctors.

See EXAMINATION FOR EMPLOYMENT AND PROFESSIONS; HEALTH, PUBLIC, REGULATION OF; PURE FOOD.

References: C. Baskerville, *Municipal Chemistry* (1911), chs. ix, xi; U. S. Dept. of Agriculture, *Report of the Solicitor for 1911*, "Habit-Forming Agents" in *Farmer's Bull.*, No. 393; *Am. Year Book 1910*, and year by year.

PAUL PIERCE.

DRUNKENNESS, REGULATION OF. Until modern times, drunkenness was not considered a punishable offense unless accompanied by other misconduct. With the growing consciousness of the evils of intemperance, which became acute in the early part of the last century, there arose a demand for a severer treatment of the simply intoxicated persons. By statutory law or local ordinance, penalties for drunkenness were enacted, and such are today provided for in all of the states. In form and degrees of severity the legal provisions for the repression of this offense differ greatly. Some states, for instance Massachusetts, have elaborate drink laws prescribing minutely the penalties and methods of treatment. In other states, the local community by ordinances or city charter undertakes to regulate drunkenness. No two states operate under identical statutes, and local regulations vary greatly. In some communities drunkenness is regarded as a very serious offense (the supreme court of Massachusetts has defined it as a crime), in many others it is not generally punished by the public authorities except in cases of habitual drunkards or of persons who, in addition, have been guilty of some other misconduct. But all American legislation views drunkenness as an offense subject to the same penalty that is applied to other minor anti-social acts —a fine or a light term of imprisonment, the fine to be worked out in prison when not paid. During 1904 nearly 35,000 persons in the United States were given a prison sentence for drunkenness; and probably an equal number were working out fines in prisons.

The evils of the short jail term as a penalty when drunkenness is the only offense are becoming more and more recognized. Notably in Massachusetts, probation has largely taken its place, especially in cases of accidental or occasional offenders, who may be permitted to work out fines under probationary care. More advanced, but still hopeful cases, are given institutional treatment under state supervision. That drunkenness should be treated as a disease rather than as a crime is slowly gaining recognition in modern legislation, but as yet no statutes reflect the scientific view that inebriety may simply be a concomitant of congenital mental defectiveness. Moreover, no state has so far made adequate provision for the permanent segregation of the confirmed and incurable inebriate. But 15 states are in some stage of developing institutions for the treatment and eventual cure of drunkards. Notable among them are Minnesota, New York, Massachusetts and Maine.

See GOTHENBERG SYSTEM; INEBRIATE ASYLUMS; LIQUOR, STATE DISPENSARY FOR; LIQUOR LEGISLATION.

References: Mayor's Advisory Committee (Boston), *Report on the Penal Aspects of Drunkenness* (1899); W. W. Woollen and W. W. Thornton, *Law Relating to Intoxicating Liquors and Drunkenness* (1910).

JOHN KOREN.

DRYS. A nickname first applied to members of the Prohibition party (*see*). Later, by extension, the term was applied to all those in favor of making illegal the manufacture or sale of intoxicating liquor. Dry also applies to territory where the manufacture or sale of intoxicating liquor is prohibited. O. C. H.

DUAL GOVERNMENT. That form of political structure which exists when the ordinary mechanism of government is divided between two organizations, neither of which is supreme over the other and behind each of which is the constituting authority of the state. Writers on political science sometimes use the term dual sovereignty, but this is inconsistent since sovereignty (*see*) in its nature is absolute and cannot be divided. The term dual government is properly used in speaking of a federal system but ought not to be applied to a confederacy (*see*) since the latter is composed of more than one state. See FEDERAL STATE; STATES, CLASSIFICATION OF. **References:** R. G. Gettell, *Introduction to Pol. Sci.* (1910), 172.

S. L.

DUE DILIGENCE. The phrase used in Article VI of the Treaty of Washington with Great Britain in 1870 as the ruling term of three rules applicable to the conduct of neutrals. Great Britain thus practically admitted an international duty "to use due diligence" to prevent the fitting out of armed vessels; to prevent the departure of such vessels from British jurisdiction; and to prevent any violation of the foregoing obligation. This doctrine as to the duty of a neutral is in the text of the treaty which the British Government declared was not international law in 1861. The insistance of due diligence was simply the easiest way of getting a settlement of the controversy, since the British Government was willing to concede the essential question of liability for damages, through the medium of an arbitration, the result of which was predetermined by the acceptance of these rules As was expected, the Geneva Tribunal found that due diligence had not been exercised, and therefore gave damages of fifteen and one-half million dollars to the United States. See ALABAMA CONTROVERSY; ARBITRATION AND PEACE; CLAIMS, INTERNATIONAL; GENEVA ARBITRATION; MARATIME WAR; NEUTRALITY, PRINCIPLES OF. References: Caleb Cushing, *Treaty of Washington* (1872); J. B. Moore, *Int. Arbitrations* (1898), I. A. B. H.

DUE PROCESS OF LAW

Importance.—Most state constitutions provide that no person shall be deprived of life, liberty or property "without due process of law," or "except by law of the land," the latter being the older form. The Fourteenth Amendment contains the same provision binding upon the states in general, as does the Fifth Amendment in restriction of national power. Present day judicial interpretation of this provision, particularly as it occurs in the Fourteenth Amendment, makes it the most broadly operative of all judicially enforceable limitations upon legislative power.

Early Interpretation.—The phrase "law of the land" comes from chapter 29 (39 of the original issue) of Magna Charta and the phrase "due process of law" from chapter 3 of 28 Edward III. Coke, in his *Institutes*, makes the former equivalent to the latter, which in turn he defines as "indictment or presentment of good and lawful men . . . or . . . writ original of the common law." Coke's mind is fixed upon the matter of procedure, and it elsewhere becomes plain that he regards "due process of law" as restraining the power of the king only and not in any sense that of Parliament. It would also seem for a number of reasons that "law of the land" in the early state constitutions was not regarded as a limitation upon legislative power. One of the first cases in which it was so invoked arose in North Carolina in 1794, in connection with a statute authorizing summary proceedings against public debtors. The attorney general defended the statute as fulfilling perfectly the definition of *lex terrae*, namely "a law for the people of North Carolina made by themselves by the intervention of their own legislature." The court accepted the definition and twenty-five years later the same view is found reiterated in the New Hampshire case of Mayo *vs.* Wilson (1 *N. H.* 58). On the other hand, in the same year with the North Carolina decision the supreme court of South Carolina in Zylstra's Case (1 *Bay* [S. C.] 384, 1794) developed contrary doctrine. In this case the plaintiff challenged successfully the validity of a fine imposed on him without the intervention of a jury. In subsequent decisions the same court gradually elaborated the doctrine that the law of the land clause put beyond the reach of legislative change the procedure that had been in vogue at the time of the adoption of the state constitution, a doctrine which was substantially adopted in 1855 by the United States Supreme Court, in interpretation of the Fifth Amendment to the national Constitution, in the leading case of Murry *vs.* Hoboken Company (18 *Howard* 272).

Later Interpretation.—The initial use, therefore, to which the clauses under review were put in restriction of legislative power was to place certain methods of enforcing the law beyond the reach of legislative alteration. These clauses to-day, however, owe their importance to their use as restrictions upon legislative power in general. An admirable illustration of the modern view of "due process of law" particularly as found in the Fourteenth Amendment restricting state power, is afforded by the decision of the United States Supreme Court in the case of Loehner *vs.* the People of the State of New York (98 *U. S.* 366, 1903) in which the court pronounced unconstitutional a New York enactment limiting the hours of work in bake-shops to ten hours a day and sixty hours a week. The decision was based, not on the ground that the *methods* by which the law was to be enforeed upon those subject to its provisions were unusual or in any wise exceptionable, but upon the ground simply that in view of "the innocuous character" of the baking business the act in question was not " a fair and reasonable and appropriate exercise of the police power of the State," but "an unreasonable, unnecessary, and arbitrary interference with the right of the

individual to his personal liberty." Some months later the same court pronounced void under the corresponding clause of the Fifth Amendment an act of Congress which prohibited an employer engaged in interstate commerce from discharging an employee for membership in a labor union (208 *U. S.* 161). In a word, "due process of law" to-day signifies "reasonable law," in which sense it bestows upon the courts, and especially upon the federal courts, as final interpreters of the national Constitution, a practically undefined range of supervision over legislation both state and national. Let us trace the principal steps by which this view of "due process of law" came into existence.

In general it may be said, that "due process of law" is most effective as a protection to property rights and freedom of action in business, or to use the technical term, "freedom of contract," (*see* CONTRACT, FREEDOM OF) and this characteristic is traceable to its very origin. To begin with, the United States Constitution (Art. I, Sec. ix, ¶ 3) prohibited the states from enacting "ex post facto" laws, (*see*) but almost immediately this prohibition was confined by interpretation to penal enactments, with the result of leaving property rights in many cases seriously exposed to legislative attack. What was to be the remedy? In a word, this was supplied by the doctrine of vested rights, which upon the basis of the dogma of natural rights, treated any legislative enactment unduly infringing property rights without making compensation to the owners as utterly beyond legislative power. This doctrine, at first put forth tentatively in mere dicta, soon found general acceptation, while at the same time the concept of what rights were to be regarded as coming under their protection tended gradually to broaden, receiving its most notable extension to charter rights in the Dartmouth College case (*see*). On the other hand, the assumption underlying the doctrine of vested rights, of the existence of fundamental rights outside the written constitution which comprised a limitation upon legislative power, had not, even at the first, passed unchallenged, and with the advance of democracy from the later twenties on this challenge became ever sharper. The political philosophy that now became dominant regarded the written constitution as owing its binding force exclusively to its character as the direct enactment of the sovereign people. Of this sovereign people, moreover, the legislature was the immediate representative. The period, furthermore, was an era of reform, which inevitably looked to the legislature for a realization of its programme, and finally it was an era of states' rights. The outcome for constitutional theory was the formulation of the doctrine of the police power, as the right of the state legislature to take such action as it saw fit in the furtherance of the security, morality, and general welfare of the community, save only as it was prevented from exercising its discretion by very specific restrictions in the written constitution. But to give legislative power such scope meant obviously that the doctrine of vested rights must either go by the board, or else that some clause of the Constitution must be found to shelter it. The clause eventually settled upon was the "law of the land" clause and its equivalent (Art. VI, ¶ 2).

The initial suggestion looking to this end came from the North Carolina supreme court, which in 1805, in the case of the University of North Carolina *vs.* Foy (2 *Haywood* [N. C.] 310) interpreted "law of the land" to mean "general law" and as therefore prohibitive, to quote from Webster's derived argument in the Dartmouth College case, of "acts of attainder, bills of pains and penalties, . . . legislative judgments, decrees and forfeitures" Building upon this basis the same court in 1832, in the important case of Hoke *vs.* Henderson (4 *Devereux* [N. C.] 15) employed the same clause to render inoperative in the case of existing incumbents a general statute providing that court clerks should be elective. From North Carolina the more general doctrine passed to New York through the agency of Kent's *Commentaries.* Its most conspicuous application in this state before the Civil War was by the court of appeals in the Wynehamer case (13 *N. Y.* 391) in which an anti-liquor law was pronounced void as constituting, with reference to existing stocks of liquors, an act of destruction such as no government was capable of performing "even by the forms which belong to due process of law." In other states, though it received countenance from Chief Justice Taney in Scott *vs.* Sanford (19 *Howard* 393), the doctrine of Hoke *vs.* Henderson was generally ignored during this period.

The Fourteenth Amendment.—It is therefore, in connection with the interpretation of the Fourteenth Amendment by the United States Supreme Court, under the influence of New York precedents, that the doctrine of "due process of law" has to-day become an established part of American constitutional jurisprudence. Yet originally the Supreme Court was averse to this doctrine, chiefly because it apprehended that a broad interpretation of the Fourteenth Amendment would lead to interference by Congress with the internal concerns of the states. It generally preferred, therefore, at first, despite the opposition of a strong minority of its members, to emphasize anew the doctrine of the police power. Eventually, however, all danger from Congress to the states passed, and the court was able to lend a more hospitable ear to a broad interpretation of its powers. The new tendency first became evident in connection with state legislation regulating railroad rates. In Munn *vs.* Illinois (*see*) the

court had ruled that the determination of what is a reasonable rate was a legislative question. A few years later, however, it gave warning that this power of regulation must stop short of confiscation, that is, must not be used to compel the running of a railroad at a positive loss. Finally, in Smythe *vs.* Ames (169 *U. S.* 466), it has ruled that the determination of what is a "reasonable rate," meaning a rate capable of yielding a proper return on the investment, rests finally with the judiciary (*see* PRICES AND CHARGES).

At the same time, the court has been delevoping more general doctrine, particularly in connection with state legislation regulating hours of labor and labor contracts, an illustration of which is afforded in the Lochner case, reviewed above. In this and similar decisions two features stand out; first, the court's definition of the police power (*see*), as the right of the state to enact legislation *reasonably* adapted to secure the recognized ends of that power; and secondly its definition of liberty (*see*) as freedom of pursuit or liberty of contract. The term "due process of law" itself, the court never defines in these cases, if indeed it so much as mentions it. Thus "liberty" and "police power" become complementary and rather flexible concepts, the line between them being drawn by the court. Nevertheless at one or two points "due process of law" still appears to impose relatively fixed barriers to the police power. Thus while anti-liquor legislation, no matter how destructive of existing property rights, has long been recognized as constitutional, it is, on the other hand, plainly intimated by Justice Holmes in the decision in the recent Noble Bank case, that even "an ulterior public advantage" will not justify more than "a comparatively insignificant taking of private property for what in its immediate purpose is a private use" (Noble Bank *vs.* Haskell, 219 *U. S.* 105, 575), doctrine which is well exemplified by the subsequent decision of the New York Court of Appeals overturning a workman's compensation act (Ives *vs.* South Buffalo Railroad Co., 201 *N. Y.* 271). Again in the case of legislation limiting hours of labor the court distinguishes, save where the employment is extra-hazardous, between persons *sui juris*, that is, males twenty-one years of age, and persons who are regarded as in some sort wards of the state, namely, women and children; wherefore in the recent case of Muller *vs.* Oregon (208 *U. S.* 412) the court upheld a statute practically identieal with the one overturned as to the former in the Lochner case (but *cf.* Knoxville Iron Co. *vs.* Harbison, 183 *U. S.* 13).

While extending its control over the power of substantive legislation the court has greatly relaxed its supervision over state legislation affecting procedure. This development was begun in Hurtado *vs.* California (110 *U. S.* 516) where the court held that the Fourteenth Amendment did not require indictment by the grand jury. Subsequently the court has similarly held that the Amendment does not require trial by the common law jury of twelve (Maxwell *vs.* Dow, 176 *U. S.* 581), nor yet that the accused be confronted by his accusers West *vs.* Louisiana (194 *U. S.* 258), nor that he be excused from testifying without prejudice. In Twining *vs.* New Jersey (211 *U. S.* 78), where this last point was determined, Justice Moody even went so far as to declare that "due process of law," that is, in the procedural sense, required only two things, a court having jurisdiction and an opportunity of being heard therein. In another class of cases, moreover, the court has occasionally declined to review findings of fact by administrative officers (United States *vs.* Ju Toy, 198 *U. S.* 253), though the general rule would still seem to be that where any considerable amount of property is at stake, due process of law requires that such findings should be reviewable judicially (Lawton *vs.* Steele, 152 *U. S.* 133).

See CONTRACT, FREEDOM OF; FOURTEENTH AMENDMENT; LIBERTY; POLICE POWER; PROPERTY, RIGHTS OF; VESTED RIGHTS.

References: T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), ch. xi; E. McClain, *Constitutional Law in U. S.* (1904); J. P. Hall, *Constitutional Law* (1910), chs. vii–x; L. P. McGehee, *Due Process of Law under the Federal Constitution* (1906); E. S. Corwin, "Due Process of Law before the Civil War" in *Harvard Law Review*, XXIV (1911), 366, 460; "Supreme Court and The Fourteenth Amendment" in *Michigan Law* Review, VII (1909), 643, and cases cited therein.

E. S. CORWIN.

DUKE'S LAWS. A legal code promulgated, March 1, 1665, by Colonel Richard Nicolls, governor of New York, before deputies from Westchester and Long Island towns, providing a form of government intended mainly for that region. Although compiled chiefly from Massachusetts and New Haven codes, local authority was exercised by elected magistrates and provincial laws were made by the governor and appointed justices. It further provided for religious toleration, freehold suffrage, and a criminal code less severe than that of contemporary England. See NEW NETHERLANDS; NEW YORK. **References:** E. Channing, *Hist. of the U. S.* (1908), II. 41–43; H. L. Osgood, *Am. Colonies in the Seventeenth Century* (1904), II. 121–123. O. C. H.

DUPLICATE TAX. See TAX, DUPLICATE.

DURAND, EDWARD DANA. E. Dana Durand (1871) was born at Romeo, Mich., October 18, 1871. From 1895 to 1897 he was connected with the New York state library as legislative librarian. In 1898 he became assist-

ant professor of administration and finance in Leland Stanford, Jr., University, but the next year was granted leave of absence to become secretary of the United States Industrial Commission, which position he held from 1900 to 1902. In the latter year he became instructor in economics at Harvard University and special expert agent of the United States Census on street railways and electric light plants. From 1903 to 1907 he was special examiner of the Bureau of Corporations, and in 1907 was made deputy commissioner of the bureau. In 1909 he was appointed Director of the Census, holding the office until 1913. Besides official reports and magazine articles, he has published *Finances of New York City* (1898).

W. MacD.

DUTIES, AD VALOREM. Ad valorem duties are levied according to the value of the imported commodities, as distinguished from specific duties which are levied according to the weight, bulk, or other unit of measurement of the commodity. While ad valorem rates are theoretically more exact in proportioning taxes according to value, they are opposed on the ground that they open the way to fraud, and that valuation cannot be made exact and uniform at all ports of entry. Moreover, such rates are not so certain to give protection to the home producer. If prices are high and business is prosperous the duties rise, when their aid is least needed. When prices fall the duties are diminished, and the producer is deprived of protection at the time of greatest urgency. It has also been argued that ad valorem duties do not conform as well as specific duties to the requirement of the Constitution that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another," because under ad valorem duties preferences are inevitable. Protectionists have opposed ad valorem duties also as affording opportunity for fraudulent undervaluation which defeats the object of a tariff law. Rates in the tariff act of 1846 were exclusively ad valorem, and although, in some of the schedules, they were as high as 75 per cent, with an average rate of 25 per cent, protectionists, because of the abolition of specific duties, refer to this measure as a free trade tariff. The Morrill tariff (*see*) of 1861 restored many specific duties, and in the long régime of protectionism they were largely retained. An effort was made by Wilson (*see* Wilson-Gorman Tariff) in framing his tariff act of 1894, to substitute ad valorem rates for many of the specific duties, but the House leader was overruled by the Democratic protectionists in the Senate. Changes from specific to ad valorem rates, however, were a feature of the Underwood tariff (*see*) of 1913. See Duty on Imports, Average Rate of; Duties, Specific; Tariff Policy of the United States; Tariff Rates. References: C. C. Plehn, *Introduction to Public Finance* (1900), 191–192; E. Stanwood, *Am. Tariff Controversies* (1903), II, 49 71–77, 119, 232, 341.

D. R. D.

DUTIES, COMPOUND. By this term is meant the combination of specific and ad valorem duties levied upon the same commodity when imported. Such duties may be imposed for either of two purposes: (1) to increase the amount of taxation by adding to the ad valorem rate a specified duty which would tend to shut out the cheaper grades of the goods affected; and (2) to give additional protection to compensate where a duty is levied upon raw materials used in the manufacture of the article. Such duties are often called compensatory.

The first compound or mixed duty was levied upon certain kinds of glass-ware in the tariff of 1824. Of more importance was its application to wool in the tariff of 1828, when a duty of 4 cents a pound and 40 per cent ad valorem was imposed. The special object of this latter combination of duties was to restrict the importation of the coarser grades of wool and thus give a larger market to the finer grades produced in this country. Such duties heavily handicapped the manufacturer who relied upon the coarser grades from abroad. On the assumption that 4 pounds of wool imported from South America was required to make 1 pound of finished cloth, the compensatory duty was therefore placed at four times 3 cents (wool duty under the same act) or 12 cents a pound plus an ad valorem rate which was designed for the protection of the manufacturing industry. If accurately applied such duties place domestic manufacturers on the same basis as the foreign competitor who has free wool. This 4 to 1 ratio has been retained in fixing certain duties in woolen schedules.

During the development of the tariff system in the Civil War period compound duties were levied upon an extended range of commodities, as carpets, cottons, iron and steel products, marble, mineral waters, soaps, perfumes, cigars, liquors and wines, in order to compensate for taxes laid on internal manufactures of the same kind. While there may be a logical basis under a protective system for compound duties, they often, because of their complicated nature, are deceptive in operation. Only an expert can tell what their effect will be, and the consumer is practically helpless in detecting their real significance.

See Duties, Ad Valorem; Duties, Specific; Tariff Rates.

Reference: F. W. Taussig, *Tariff History of the U. S.* (5th ed., 1910), 196–198.

Davis R. Dewey.

DUTIES, DRAWBACKS OF. Beginning with the first tariff act of 1789 the revenue system of the United States has provided for

refunds of duties on goods reëxported. Such refunds or drawbacks under the Payne-Aldrich tariff of 1909 were allowed as follows: (1) when duties have been paid on imported raw materials entering into the finished product which is exported, a drawback up to 99 per cent of the duties paid provided the imported material can be satisfactorily identified under regulations laid down by the Treasury Department; (2) when internal revenue duties have been paid on alcohol which enters into the manufacture of medical or toilet preparations afterward exported; (3) to millers of wheat, imported from Canada, to be made into flour for export. In some of the tariff acts drawback privileges have been more liberal, but as there was opportunity for fraud the present disposition (1913) is to limit the privilege to operations which can be thoroughly safeguarded. In 1912 the drawbacks or customs debentures amounted to $4,526,000. The drawbacks on exported sugar constituted the largest amount, followed by that on seeds Reference: J. D. Goss, *Hist. of Tariff Administration in the U. S.* (1891). D. R. D.

DUTIES, FOREIGN VALUATIONS FOR. Under the tariff law, since 1890, imported goods subject to duties are appraised at the market value and wholesale price in the principal markets of the country from which the goods are brought. See APPRAISAL OF IMPORTED GOODS FOR DUTIES; TARIFF ADMINISTRATION. D. R. D.

DUTIES, SPECIFIC. Specific duties are levied on imports according to the weight, bulk, or other unit of measurement of the commodity. Such duties are not so delicately adjusted to the value of a commodity as are ad valorem rates; and because of changes in the value of a unit of measurement, their incidence may vary from what was intended at the time of their imposition. On the other hand specific duties have an advantage in ease and certainty of collection. There is less opportunity for fraud by undervaluation or for error by inaccurate appraising.

In the first tariff act (1789) both ad valorem and specific duties were used, but the latter were low. The tariff of 1816, with protection more openly in view, extended the range of specific duties; and from that date until the present protectionists have strongly favored their adoption in place of ad valorem rates. As a check to undervaluation they have even been favored by Democrats, as in 1857 by President Buchanan, who was dissatisfied with the exclusive use of ad valorem rates under the Walker tariff of 1846, on account of the large amount of fraud they permitted by undervaluation.

Specific duties are more suitably applied to raw materials and manufactures of a simple character where the equality is uniform and where there is little opportunity for deception in the entry of the goods. They are, therefore, applied to customs taxes on lumber, grain, tobacco, cattle, flax, hemp, wool, sugar, spirits, wines, iron and steel products, and minerals. At every revision of the tariff there is a tendency to extend the list of specific duties. In order to adjust specific duties to value, many of the tariff schedules carefully provide for a scale of rates depending upon value which is substantially an ad valorem rate. For example, in Section 131 of the tariff of 1909, for certain kinds of steel products the scale was as follows:

Valued at ¾ cents or less per lb. 7/40 of 1 cent per lb.
Valued at ¾ to 1.3 cents per lb. 0.3 of 1 cent per lb.
Valued at 1.3 to 1.8 cents per lb. 0.5 of 1 cent per lb.
Valued at 1.8 to 2.2 cents per lb. 0.6 of 1 cent per lb.
Valued at 2.2 to 3.0 cents per lb. 0.8 of 1 cent per lb.
Valued at 3.0 to 4.0 cents per lb. 1.1 of 1 cent per lb.
Valued at 4 to 7 cents per lb. 1.2 of 1 cent per lb.
Valued at 7 to 10 cents per lb. 1.9 of 1 cent per lb.
Valued at 10 to 13 cents per lb. 2.3 of 1 cent per lb.
Valued at 13 to 16 cents per lb. 2.7 of 1 cent per lb.
Valued at 16 to 24 cents per lb. 4.6 of 1 cent per lb.
Valued at 24 to 32 cents per lb. 6 cents per lb.
Valued at 32 to 40 cents per lb. 7 cents per lb.
Valued above 40 cents per lb. 20 per cent ad valorem.

See DUTIES, AD VALOREM; DUTIES, COMPOUND; TARIFF RATES.

References: F. W. Taussig, *Tariff Hist. of the U. S.* (5th ed., 1910), 159; C. C. Plehn, *Public Finance* (1900), 191.

DAVIS R. DEWEY.

DUTY ON IMPORTS, AVERAGE RATE OF. This term expresses the percentage of total customs duties calculated on the total value of all imported goods which are dutiable under tariff laws. Taken by itself the term has little significance as an index of the burden of customs duties, for if the importation of goods bearing heavy duties increases faster than that of goods bearing moderate duties, the average rate will rise although there has been no increase in rates. For example, the average rate of duties in 1883–1884 was 41.61 per cent; in 1884–1885, 45.86 per cent; and in 1886–1887 47.10 per cent, and without change in rates. The rise in the average rate was due to the changes in the kinds of goods imported. A change in the price of the goods imported will also change the percentage of duty collected. In 1884 the import price of steel rails was $33.36; the rate of duty was $17 per ton, giving an equivalent ad valorem rate of 50.95 per cent. In 1895 the import price was $14.55; the rate of duty, $7.84, making a percentage of 53.89. Although the duty had been more than halved the average rate of duty was higher.

Until 1821 no separation was made in the statistics of import values between the amounts of dutiable and free goods, so that it is impossible with regard to earlier years, to state the average rate of duty on commodities which paid an import duty. Beginning with 1821 the average rate of duty on dutiable imports at selected dates has been as follows:

Year	Rate	Year	Rate
1821	35.6 per cent	1870	47.1 per cent
1830	48.8 per cent	1880	43.5 per cent
1840	30.4 per cent	1890	44.4 per cent
1850	25.2 per cent	1900	49.2 per cent
1860	19.7 per cent	1910	41.5 per cent

In 1910 the average rate of duty on all goods free and dutiable was 21.1 per cent.

See APPRAISAL OF IMPORTED GOODS FOR DUTIES; DUTIES, DRAWBACKS OF; TARIFF ADMINISTRATION; TARIFF, MAXIMUM AND MINIMUM; TARIFF RATES; TARIFF STATISTICS; TAXATION OF RAW MATERIALS.

References: E. Stanwood, *Am. Tariff Controversies* (1903), II, 381; D. R. Dewey, *Financial Hist. of the U. S.* (1903), 83, 189, 252, 263, 304; U. S. Department of Commerce, *Statistical Abstract* (annual).

DAVIS R. DEWEY.

E

EASEMENT. A right which the owner of one parcel of land has, by reason of such ownership, to use some portion of the land of another for some purpose not inconsistent with the general property in the owner.

H. M. B.

EAST FLORIDA. In 1699 d'Iberville settled on the present site of Mobile and made the Perdido River the boundary between French Louisiana and Spanish Florida. In 1763 England received from Spain her Florida possessions and from France all of Louisiana east of the Mississippi except a small strip transferred to Spain. England, October 7, 1763, divided the province into East and West Florida. East Florida was bounded on the west by the Gulf of Mexico and the Apalachicola River, on the north by a line running from the juncture of the Flint and Chattahoochee to the source of the St. Mary's thence to the ocean. on the east and south by the Atlantic Ocean and the Gulf. St. Augustine was selected as the capital. Representative government was established and the first popular assembly met in January, 1781. During the American Revolution East Florida remained loyal but by the treaty of 1783 was ceded to Spain, the same boundaries being retained. The English colonists departed in 1784 and the desolation of Spanish rule fell upon the province. There was no pretense of representative government and commerce and industry practically disappeared. The Spanish incited the Indians to attack the Americans and in retaliation Florida was subjected to frequent raids. The United States temporarily occupied East Florida during the War of 1812 and again in 1818 during the Seminole War. Negotiations for the purchase of the two Floridas were brought finally to a successful termination and on July 10, 1821, East Florida was transferred to the United States. See Annexations to the United States; Florida, Annexation of; Louisiana Annexation; West Florida. **References:** G. R. Fairbanks, *History of Florida* (1871); H. B. Fuller, *Purchase of Florida* (1906); E. L. Green, *Hist. of Florida* (1898); J. S. Bassett, *Life of Andrew Jackson* (1911), I, chs. xiv–xvi; R. H. Rerick, *Memoirs of Florida* (1902).

H. B. F.

EAST JERSEY. See New Jersey.

ECONOMIC CRISES. See Crises, Economic.

ECONOMIC HISTORY OF THE UNITED STATES

Colonial Economy.—The economic life of the colonists in that part of North America now occupied by the United States was very simple, the main energies of the people being directed to the extractive industries. Rich in natural resources and poor in the necessary labor and capital to develop diversified pursuits, the colonists naturally devoted themselves to the production of a few staples in which they had the greatest advantages and for which, also, there existed a strong demand in Europe.

The most important industry was, of course, agriculture, which furnished the chief food supplies in all the colonies and, except in New England, the main articles of export. During the colonial period agriculture was very rude. From the Indians the colonists learned the art of girdling and burning the trees, which were regarded as an encumbrance rather than a blessing. The practice of "earth-butchery," so severely criticised by foreign visitors, was general and was economically justified by the necessity of securing the largest possible returns with the least expenditure of labor and of capital. Maize and wheat in the North and tobacco, rice, and indigo in the South were the principal agricultural products. Closely allied to these were the lumber products, masts, spars, clapboards, pipestaves, etc., of New England, and naval stores of tar, pitch and turpentine of North Carolina. Fur trading was most lucrative in the middle colonies. In New England, where agriculture by reason of a sterile soil and severe climate was least profitable, the chief occupations were lumbering, ship-building, trading, and fishing. A profitable trade was developed with the Mediterranean ports of Europe, and especially with the West Indies, to which fish, lumber, and meat were sent in exchange for molasses, from which was distilled the rum that formed the basis of a lucrative traffic in slaves from Africa.

The slave trade was first developed to furnish the West India islands with a needed supply of labor for the sugar plantations, but was introduced into Virginia soon after its settlement. During the greater part of the colonial period, however, the scarcity of labor in the continental colonies was made good by other forms of compulsory labor such as indented white servants and convicts. These were introduced principally into the southern colonies where the nature of the staple crops necessitated farming on a large scale and labor coöperation. In the North, small farms and independent proprietors were the rule. The colonists were handicapped by scarcity of capital as well as of labor and by various ingenious makeshifts and labor-saving devices sought to make good this lack. Of all forms of capital metallic money seemed the least indispensable and was exported for other forms more urgently needed. To supply this want the colonists resorted to the use of various commodity substitutes, like wampum, and finally began the issue of paper money. This practice, however, was forbidden by Great Britain in 1751 and 1764.

British Colonial Policy.—In common with the other European countries, Great Britain developed a colonial policy, according to which the colonies were to be made to contribute to the national power and wealth. Accordingly the carrying-trade, the foreign commerce and the domestic industries of the colonies were regulated with this view in end. A complete monopoly of ship-building and of the carrying trade was reserved to Englishmen, but as this included the colonists as well as those living in the mother country, the colonists were benefited by this exclusion of foreigners. Colonial exports were divided into two classes of which the "enumerated" commodities, such as tobacco, indigo and, for a period rice, naval stores and furs, could be shipped only to England, while all others were excluded from England or her natural markets. More serious were the restrictions upon imports into the colonies; all imports must be brought from English ports, and a prohibitory duty was levied upon molasses from the French and Spanish West Indies. Certain manufactures in the colonies were also forbidden: woolen goods for export (1699), hats (1732) and iron manufactures (1750). On the other hand, other industries, like the manufacture of naval stores, much desired by a sea-faring nation, were encouraged by a system of bounties (*see* COLONIZATION BY GREAT BRITAIN IN AMERICA; NAVIGATION ACTS).

Struggle for Commercial and Economic Independence.—Though the colonists prospered under this policy, which was characterized by Adam Smith as "less illiberal" than those of other nations, for more than a hundred years, their industrial development finally made the restrictions burdensome, a fact which was further emphasized by the British policy of strict enforcement. The sugar act of 1764 practically cut off the importation of cheap French molasses, the prohibition of colonial bills of credit irritated the colonists, and the new imposts imposed additional burdens of taxation. The Revolution was largely a protest against these restrictive measures, and in so far, was an economic struggle. After the war, accordingly, an effort was made to secure freedom of trade with the nations of Europe, but it was soon evident that these would not give up their mercantile policies. A movement for retaliation and industrial independence set in, and the new Constitution gave to the central government the needed control over foreign commerce. But before these ideas could be given effect the outbreak of the Napoleonic wars in Europe gave American ship-owners and farmers unexpected opportunities for gain. As the principal neutral nation, the United States acted as the chief carriers of the continental nations and furnished them with food-stuffs from our own farms and colonial products from the West Indies and elsewhere. The growth of American shipping during this period was unparalleled, increasing from 123,893 tons in 1789 to 749,341 tons in 1805, and the foreign trade grew from $48,000,000 in 1791 to $247,000,000 in 1807. While engaged in this neutral trade the United States was forced, in defense of its rights upon the high seas, to protest forcibly against the treatment of its vessels and citizens by the warring nations and it again took up arms against Great Britain. By the Treaty of Ghent which concluded the War of 1812 the United States attained practically complete commercial independence.

The struggle for national industrial independence may be said to have been introduced by the restrictive policy of the embargo and the War of 1812, which was followed by the enactment of protective legislation. The energies of the people were diverted from foreign trade to the development of their internal resources. Manufactures developed steadily under this stimulus. Cotton spinning showed the greatest expansion; in 1803 there were only 4 cotton factories in the country; by 1815 the number of spindles—the best criterion of growth—was 500,000; by 1840 it was 2,284,000; and by 1860, 5,235,727. Most of the early machinery was copied from English models, but American inventors began early to introduce improvements and original devices. The industrial establishments were generally small and local, though even as early as 1850 the movement toward concentration and combination had begun. As yet, however, the country was too new and undeveloped to permit the growth of a purely industrial state. Greater opportunities were offered in the appropriation and exploitation of the wealth of a virgin soil.

The Westward Movement.—The westward movement was the dominating task of the American people for a hundred years, beginning practically with the Revolution and receiving added impetus with the annexation of Louisiana. It has profoundly affected the social and political life of the country as well as the economic development, making for democracy and social equality and calling forth characteristics of independence, initiative, and sturdy self-reliance. The settlement of the West has been called a great example of colonization, and in some of its aspects it resembled this. The early settlers were true pioneers who lived hard, rough lives, economically self-sufficient and isolated almost completely from the rest of the world. Without markets they were unable to dispose of their agricultural surplus. This condition of affairs was changed by the introduction of the steamboat on the western rivers, which afforded adequate means of transportation; and by the spread of cotton culture through the southwest, which created a market. First introduced on the Ohio River in 1811, the number of steamboats on western rivers grew rapidly to 200 in 1829 and 450 in 1842. The value of the commerce carried on the rivers increased greatly. In 1816 the value of the commerce received at New Orleans was $8,062,540, of which about 80 per cent came from the Ohio and upper Mississippi; by 1840 the commerce received at New Orleans had increased to $49,763,825.

For twenty years after the invention of Whitney's cotton gin, which gave the first stimulus to cotton growing, it was confined to the Atlantic seaboard. After 1811 the fertile lands of Tennessee and Louisiana, and a little later Alabama and Mississippi, began to attract attention and for twenty-five years a stream of emigrants poured into these states. By 1834 they produced two-thirds of all the cotton grown in the United States. As the southern planters confined themselves to cotton culture, both because of the greater profit to be derived therefrom and the impossibility of carrying on diversified industries with slave labor, a great and constantly growing demand for food stuffs, mules, implements, etc., was developed which was met by the western settlers for the most part. An estimate of 1845, made by Ingle, was that in twenty years southern planters had spent $900,000,000 in neighboring states for mules, horses, implements, and clothing. These, together with manufactured goods from the North, were paid for with the profits from cotton, of which three-fourths was exported to England. There was thus developed a territorial division of labor between the different sections of the country, from which each profited. A close economic alliance was established, based in the last analysis upon slave-grown cotton, which goes far to explain the proslavery attitude of those in the North who were profiting by it.

Free Land.—The existence of the public domain has had an immense influence upon our economic development. It has offered an outlet for a growing population and has greatly simplified such economic and social problems as unemployment, the standard of living, and the rate of wages. Only recently, with the exhaustion of the free land, have these begun to press upon us. The public lands were early used by the Government to bring in a revenue, but this policy was superseded about 1820 by the permanent one of disposing of the land to actual settlers under such conditions and in such amounts as would secure its widespread ownership and utilization. Under the method of preëmption, generally adopted in 1841, the settler was given a prior right to purchase the land, and by the Homestead Act of 1862 (*see*) the actual settler received a farm without cost after five years' residence and cultivation. Under the stimulus of these grants the farm area expanded rapidly, the population increased, and the production of grain rose enormously. Between 1840 and 1860 the production of grain in the northwestern states was estimated to have increased from 218,463,583 to 642,120,366 bushels Until about 1850 nearly all the operations of agriculture were performed by manual labor, but after that date mowing, reaping, threshing machines, revolving hay-rakes, cultivators, horse-hoes, seed-drills, and other similar implements were introduced. By substituting animal power for hand labor the productive capacity of the farms was enormously increased. Most of the agricultural products were still consumed at home, not more than 10 per cent of American grain being exported in 1860.

Internal Improvements.—One of the most urgent problems that offered itself for solution in connection with the westward movement of the population and the increased production of commodities which were seeking a market, was that of providing adequate means of transportation. The early turnpike was a great improvement over the colonial earth roads, but the cost of transportation by wagon was still prohibitive for long distances and for any but the most valuable goods. The magnificent waterways with which the United States is provided have always been used, but they were made still more available by the building of canals (*see* CANALS), which connected them and provided through water communication between the Atlantic seaboard and the Mississippi valley. As private capital was not adequate to the task of providing the necessary internal improvements and the Federal Government, which had willingly entered upon the work, was stopped by constitutional objections, the several states undertook to provide the needed facilities. New York state

was the first in the field with the Erie Canal, completed in 1825, and this proved such a success that other states soon followed with extravagant plans for internal improvements. The crises of 1837 brought these to an abrupt end, and caused the withdrawal of the states from further participation in works of this sort. Railroads now began to be built by private corporations rather than by government. By 1850 they were competing seriously with the canals and by 1860 had succeded in diverting much of the internal commerce of the country to themselves. They have been of immense significance in connecting the distant parts of the wide area of the United States and in providing cheap and quick means of transporting the bulky commodities of western farms, southern cotton fields, and northern mines.

Currency.—A new country with unlimited opportunities for investment is always handicapped by lack of capital, and as a result of faulty economic reasoning usually tries to make good this lack by the issue of cheap money. In the United States the first resort to this expedient after the colonial period was made during the Revolution itself, when the Confederation issued $241,552,780 of continental paper money. The issue of bills of credit by the states was forbidden by the Constitution, and the establishment of a national bank in 1791 and of the mint in 1792 solved the currency problems of that period. A short experience with state banks between 1811 and 1816 showed the dangers of unrestricted bank note issues, and in the latter year the Second Bank of the United States was chartered by Congress for twenty years. After the refusal of Congress to recharter it in 1836, the country was again flooded with depreciated and fluctuating note issues of local banks, which were finally brought to an end by the establishment of the present national banking system in 1863. With the development of modern banking facilities and the extension of credit, however, a new phenomenon had shown itself in the form of periodic crises. The first of these in the United States occurred in 1819, and was followed by more serious disturbances in 1837 and 1857.

Social Changes.—The material development of this period, the spread of the factory system with its attendant growth of a wage-earning class, and the improvements in the means of transportation had all served to change society markedly from what it had been at the opening of the century. Corporations were beginning to take the place of private enterprises, and labor was organizing in defense of its rights. A rather abortive labor movement in the early thirties was followed by a series of communistic experiments in the forties, of which Brook Farm is the best known. The condition of labor was gradually improving during this period, wages rising while prices were about the same in 1840 and 1860. In other respects too, as the shortening of the working day, imprisonment for debt (*see*), the extension of political rights, the establishment of public schools, etc., the working classes secured improvements in their condition. But these industrial changes were taking place only in the North; in the South where most of the manual labor was performed by slaves, no such amelioration in their lot was possible.

The worst effects of slavery were felt by the slave-owners and those associated with them rather than by the slaves themselves. Under a system of slave-labor the South was limited to the production of a few staple crops, of which cotton was the most important, because of the lack of versatility and trustworthiness of the slaves and the necessity of providing them with work at all seasons of the year. As a result of this specialization the production of cotton expanded rapidly, from 109 pounds to each slave in 1820 to 485 pounds per slave in 1853; the total crop in 1860 was 4,675,000 bales, which was seven-eights of the world's supply. But while the production of cotton increased, that of cattle, swine, flax, rice, sugar, and practically every other product except tobacco, fell off. Manufacturing, mining, forestry, commerce, and other industrial pursuits never obtained a foothold in the South. The progress of the slave states was thus absolutely prevented, while the moral effects of slavery upon society were even more insidious and harmful than the economic losses involved in its maintenance. Industrially the South remained stagnant, and not until war had abolished slavery was it able to enter upon the remarkable advance that has characterized its recent history.

Economic Development since 1860; Agriculture.—The main features of the economic development of the United States since the Civil War can only be sketched briefly. Perhaps the most striking characteristics are the increasing industrialization of the country, the concentration of industry, the extension of governmental control, the exhaustion of the free land, and the growth of the population to the point where it practically consumes all the domestic food supply. After the Civil War the introduction of agricultural machinery, the extension of the railroads and the taking up of free lands by actual settlers brought about an enormous increase in the production of grain; thus wheat increased from 173,000,000 bushels in 1860 to 459,000,000 in 1880. The large surplus thus produced was exported and the American grain trade grew to considerable dimensions. Since then the population has expanded more rapidly than the farm area. With the exhaustion of the available free lands, moreover, problems of conservation have been brought to the front. Because of their abundance we have always been prodigal of our natural resources; our agri-

cultural methods have been characterized by carelessness, and we have been content to exhaust rather than cultivate the soil. The reckless cutting of our forests has forced the Government to adopt the policy of reserving forest areas (*see* CONSERVATION), while the exhaustion of our fish is avoided only by the restocking of our lakes and streams. Irrigation (*see*) has been undertaken to reclaim dry lands, and methods of dry farming and scientific seed selection are doing much to redeem our agriculture from the early reproach of carelessness and ignorance.

Transportation and Commerce.—Owing to the enormous distances and the territorial distribution of staple products, the railways are more important in the United States than in any other country in the world. The railway net has accordingly been rapidly extended to every part of the country; the number of miles has grown from 30,625 in 1860 to 92,296 in 1880 and 246,124 in 1911. At the same time the improvements in roadbed and track, the substitution of steel for wooden bridges, and the introduction of heavier and larger cars have immensely increased the carrying capacity of the roads, and have also permitted a fairly steady reduction in rates. With extension has gone combination, and most of the railways of the country are now combined into a half dozen enormous systems. This has brought to the front the problem of national control and regulation, which has been met by the establishment and strengthening of the Interstate Commerce Commission. There has been a steady diversion of traffic from the lakes and rivers and canals to the railways, though recently there has been a revival of interest in waterways. Our domestic commerce is about twenty times as great as our foreign commerce, but the latter has received a disproportionate amount of attention, as has also the tariff. Ninety per cent of our foreign commerce is carried in foreign vessels and there is now strong pressure to revive the American merchant marine by the grant of subsidies or other favors. The decline of our foreign merchant marine dates from the sixties, when iron steamers began to be substituted for wooden sailing vessels, and the Civil War interrupted our shipping interests. The past decade or decade and half (1913) has seen a rapid expansion of our foreign trade and the invasion by American manufacturers of foreign markets. As a result of this, in part, there is now discernible a decided trend in the direction of reducing our tariff barriers and admitting the products of other countries on more favorable terms (*see* TRANSPORTATION).

Manufactures and Industrial Combinations.—Perhaps the most striking feature in the recent industrial development of the United States has been the enormous growth of manufactures. Between 1850 and 1900 the population of the country was more than trebled, the value of agricultural products was just trebled, while the value of manufactured products was increased twelvefold, from $1,019,000,000 to $13,014,000,000. This was made possible by the opening up and utilization of the wonderful natural resources of the country on a large scale, by the extension of the domestic market, the improvement and cheapening of transportation facilities, and the fuller application of labor saving devices. In the character of the people, in the soil and climate, and abundance of primary raw materials, especially coal and iron, the United States is most favorably circumstanced for leadership in the industrial world. Since the middle of the century there has been a strong tendency towards concentration of manufacturing in large establishments, where economies due to large-scale production can be effected. Since about 1898 there has been a rapid movement towards the combination of these large competing concerns into great single organizations or trusts. On the whole these may be regarded as a more efficient form of organization, and in so far they will maintain themselves and may be accounted for good. But by their very size and strength they have forced upon the people and the government problems of control and regulation. It is now generally recognized that this problem can be solved only by the National Government, as the trusts transcend the borders and the powers of the separate states. Important steps in the direction of regulation have already been taken and others may be expected.

Labor.—Hand in hand with the development of industry has gone the growth of a wage-earning class. Since the Civil War, with the increase of immigration and the exhaustion of the free land, this class has grown in numbers and importance and has developed distinctively class interests. Labor organizations have been formed, national in scope, which have advanced the interests of labor or defended them from encroachment. Often they have attempted to advance their interests by restrictive or monopolistic regulations, or by strike and boycott have interrupted industry, but on the whole their efforts have made for improvement. Protective legislation has been passed for women and children, though important reforms in the case of adult men have not infrequently been blocked by the courts. The labor problem has been intensified by the increasing immigration of numbers of aliens, especially from southern and eastern Europe, whose presence threatens the high standard of living hitherto maintained by American labor. There has, however, been a steady improvement in the condition of labor from 1860 to the present time: the average length of the working day has been decreased, wages have increased greatly while prices have changed little and the material well-being of the average workingman

has improved in other respects. On the other hand he has been unfavorably affected by the fluctuations in industry and the recurrent crises, as in 1873, 1893, 1907. There has also been a disproportionate concentration of the growing wealth of the country in the hands of a comparatively small number during this period. But, on the whole, the economic development of the American people has produced qualities of character and mind that may be trusted to deal ably and honestly with questions of economic policy which the future may present.

See CANALS AND OTHER ARTIFICIAL WATERWAYS; COMMERCE; FRONTIER; INTERNAL IMPROVEMENTS; PAPER MONEY; RAILROADS; SLAVERY; TRANSPORTATION; WATERWAYS; WEST AS A FACTOR IN AMERICAN POLITICS; and under BANKING; BANKS.

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ECONOMIC THEORY, HISTORY OF

Matter and View-Point.—The history of economic theory reveals in their historical sequence doctrines whereby men have sought to explain the nature and relations of economic phenomena. Such doctrines present variety and conflict at the same and different periods because of error and fallacy, but mainly because conceived in different ways. Whether consciously or unconsciously, some doctrines are designed to explain merely concrete historical facts, while others would explain ideal economic conditions. The former conception relates to what has been and what is, inclines to use inductive method and reject ethical or teleological motives. It associates intimately economic "principles" with technical processes, forms of organization and institutions peculiar to each age, thus maintains a succession of economic stages and a materialistic interpretation of history. The second view seeks in preconceptions of the nature of man and society "correct" principles, favors corresponding social readjustments; in its extreme form constructs an ideal system unfettered by present conditions or past experience. It inclines to use deductive methods, emphasize ethical factors and aims in economics, and is specially liable to error through narrow or untrue preconceptions. Between the two extreme conceptions, all gradations and combinations of doctrines are represented—many sufficiently distinctive and unified to constitute "schools" of economics. Essential continuity and intimate relation to political and economic organization characterize the history of economic theory.

Ancient Theories.—Greek economic theories were deduced from ethics and politics, shaped partly by philosophic conceptions concerning the nature of man and society, partly by prevailing economic conditions. Ethics explains right-living as the proper aim in life. Politics shows how the city-state should maintain between individuals relations which conduce to right-living. Each household, constituted of blood-relatives and slaves, was largely self-sufficing. The state was an enlarged household. Economics concerned the efficient management of the household in providing for material needs which, though inferior, are urgent. Slavery (*see*) was fundamental, affording necessary manual labor, rendering extensive exchanges unnecessary, permitting citizens to pursue exclusively military and civic occupations. These were basic premises for economic doctrines presented by Plato, Xenophon, and especially Aristotle.

Property (*see*) consists of things essential to health and well-being. It includes the "instruments," both "living" (slaves) and "lifeless," whereby necessaries are obtained. Economics is the art of acquiring and using property. Acquisition is (1) legitimate, when providing necessary household supplies by extractive industries; (2) illegitimate, when for hoarding or attained by trade, usury, service for hire, where men gain, not from nature, but from each other. The perversion is making wealth the end, instead of the means, of living. Vocational division of labor springs from the mother-need of the state: *viz.*, that "no one is self-sufficing, but all have many wants." It utilizes natural aptitudes, makes products plentiful and of better quality, within the self-sufficing household. Manual labor debases, is precluded for citizens. Hence slavery is natural; for Aristotle, whose aversion to exchange is extreme, necessary. Exchange which supplied deficit in one household from surplus of another or procured exotic products, perferably by barter, was legitimate acquisition. But exchange for profit makes acquisition the end, leads to hoarding, creates conflict of interests, perverts the use of property. Yet a nascent money economy compelled a reluctant assent to such exchanges, if restricted and regulated, or conducted by government. Exchange was just when both parties obtained equal satisfaction. Money facilitates exchange, but is spe-

cially liable to abuse by hoarding and usury. These were abuses in Greece because hoarding specially affected currency and markets, and lending was for unproductive use so that "barren metal" did not breed. Aristotle rejected Plato's community of property, but would prevent great inequalities of wealth by regulating exchanges and would encourage voluntary communism in consumption. Greeks would regulate population, averting excess by destruction, prevention, colonization.

Roman jurisprudence provided the basis for later doctrines concerning natural laws, rights, individual property, free contract, distinction between usury and interest; also government regulation of prices, measures, quality of goods, export of specie. Romans formulated the idea of just price, shared the Greek preference for agriculture, some asserting superiority of free over slave labor.

Middle Ages.—Economic doctrines reappear in the Middle Ages with theologians, best represented by Aquinas (1225–94). They are a part of ecclesiastical dogma, influenced by Plato and Aristotle, tempered by essential concessions to economic requirements. Earlier churchmen found in natural law and biblical interpretation justification for community of goods and condemnation of trade. Pursuit of wealth fosters luxury, diverts men from serving God. Trade stimulates covetousness and deceit, and, as the trader adds no value to his wares, his gain is another's loss. But economic doctrines centered in two ideas—both vaguely conceived for combatting abuses. (1) Wares should be sold at a just price. (2) Taking interest is sinful. Necessity of trade revived, with new applications, Aristotle's distinction between legitimate and illegitimate acquisition. Legitimate trade provided only necessaries for self, family, the poor, or necessary imports. Trade for mere gain, especially speculative profits, is base. Buying and selling should be at just price, without deception—honest weights, measures, quality being secured by government regulation. Just price, though vaguely conceived, was a fair reward for the producer of the goods—a crude cost of production theory. Against interest, were scriptural injunctions and Aristotle's contention that metal is barren. A new argument distinguished between consumptibles (things destroyed by use) and fungibles (things not consumed by use), declared money a consumptible and exaction of interest like charging for use of things sold. Charging interest for time, including higher price for credit, is unjust; because time, being common property, cannot be sold. Practically, interest was unjust because: (1) borrowing was for consumption, rarely for productive use; (2) money-lenders had few alternative investments while mercilessly exploiting borrowers' needs. Related doctrines prohibited clipping, counterfeiting, debasing, sometimes exporting money. Change and variety of money value wrought special injustices because storing value was the preëminent money-function. Exceptions to preceding doctrines resulted increasingly from rising town economy, vocational division of labor, consequent growth of trade, industry, opportunities for productive investment of capital. "Legitimate" trade expanded, interest became just when lenders suffered "damage" or missed other opportunity for profit. Dignity of labor increased as slavery became economically impracticable. Communistic ideas receded as private property and individual initiative developed.

Mercantilism.—In modern times, geographical discoveries, political unification, mechanical inventions gave trade and industry an impulse which revolutionized economic organization, methods, theories. By empirical processes, rising states (1500–1700) based economic policy on the unifying ideas that national power depends on abundant specie and national self-sufficiency, that one nation loses what another gains by trade, that government measures must assure national power. Expanding commerce, commutation of feudal dues, use of standing armies and paid officials, rapid transition to money economy, rising prices created urgent need for money. New silver supplies compelled commercial competition between nations to obtain metals. These facts and the characteristics of precious metals—durability, stability of value, facility of exchange for desired things—made precious metals preëminent forms of wealth. Hence governments sought this element of power through a "favorable" balance of trade (*see* BALANCE OF TRADE). National self-sufficiency embodied the ideas that plenty promotes population and power, and requires measures to assure the food supply (corn laws). Corollaries to the main doctrines justified restrictions on imports; encouragement of domestic industries which supply goods for use and export; restrictions on export of food and essential materials of manufacture, which foster industry by low wage, abundant and cheap materials; protection of domestic merchants and ship-owners, whose earnings influence favorably the balance of trade; preferential colonial policy, which procures advantageously colonial products and materials, and obtains for domestic manufacturers, merchants and shippers profits of colonial markets. Encouragement of shipping (navigation laws) procured numerous ships, skilled seamen, essential ship-building industries, strengthened national defense and augmented national earnings; hence became a cardinal part of the doctrine. Maintenance of a large population—essential to industrial, military, national power—was a conscious aim of these doctrines. Each doctrine justified an integral part of national policy; hence the inter-relation and unity of all in an ultimate system, which met needs, because adapted to conditions, of the time. Emphasis of trade in this national economic sys-

tem explains the meaning of the designation, mercantilism.

Return to "Natural Liberty."—Mercantilism served immediate needs in the nation-making process. Its excesses and one-sidedness later engendered reaction. Measures to maintain a "favorable" balance of trade suppressed commerce. Exclusive commercial and colonial policy embittered international feeling and provoked war. Government and guild regulations to foster industries fettered them, while hampering internal trade and stifling agriculture. Political corruption, unequal, arbitrary and oppressive taxation discouraged enterprise and intensified poverty. Meanwhile changing industrial methods required increasing capital, enlargement of markets, readjustment of labor to industry. Evils were ascribed to "too much government," and the old doctrine of natural law came to fruition in a new political philosophy which justified reforms. The social contract limited government functions to protection of life and property. Private property and individual liberty became natural rights, the free exercise of which by individuals would result in general harmony and welfare. The regulative policy of government should give way to *laissez faire* (*see*). Prominent precursors of reform were Boisguilbert, Vauban, D'Argenson, Cantillon in France; Hobbes, Locke, Petty, North, Hume in England. The new economic doctrines were differentiated from politics, ethics and theology and formulated into the first scientific system by the Physiocrats in France and Adam Smith in England.

With the basic view that natural laws govern economic phenomena, physiocrats centered constructive doctrines in a net product which proceeds from the bounty of nature. Agriculture, including all extractive industries, replaces wealth consumed in production and yields a surplus—the contribution of nature which "labors along with man." Manufactures transform materials obtained by agriculture, but add nothing to wealth. Labor in manufactures, commerce and other occupations renders necessary services, but is unproductive. Agricultural labor alone obtains net product, is productive. The net product is the sole source of taxes, savings, subsistence for non-agricultural classes. Expediency requires a single direct tax on net product, since taxes elsewhere enhance the price of services and are shifted to net product. Formulae explaining how the share of each class was determined and drawn from net product, constituted the first scheme of distribution (Quesnay). Vitiating error was the assumption that wealth production is creation of materials (instead of utility). Turgot, having clearer insight into value, greatly advanced the theory of distribution.

Adam Smith (1776) selected from all predecessors and contemporaries economic doctrines suited to a rapidly rising exchange economy, correlated them into a comprehensive system which both avoided one-sided exaggeration and included main features of the coming economic organization. The source of national wealth was labor, which produces either the goods consumed by the nation or the things exchanged for them. Division of labor (*see*)—in the sense of specialization now first explained—springs from a natural propensity to barter, and vastly enlarges production, but necessitates extensive exchanges. Freedom of labor and freedom of exchange, internal and external, are essential to obtain maximum results from the nation's labor. Self-interest under free competition obtains for individual and nation maximum benefits and minimum inconvenience. Exchange requires consideration of value, which Smith inaccurately bases on labor, and money which is a convenient agency to facilitate circulation of consumable goods. Capital results from parsimony, is rewarded with profits or interest. The tripartite conception of land, labor and capital as fundamental factors of production became the basis of a complete scheme of distribution under rent, wages and profits. Smith's inaccurate conception and terminology render vague and unacceptable his doctrines concerning all three, yet students now find therein the germ of almost every theory since propounded. For three-quarters of a century, the main work of economists was, by critical analysis and selection, to perfect the system of doctrines thus broadly and coherently conceived. Unfortunately and perhaps owing chiefly to historical reasons, Smith's successors exaggerated his tendency to excessive individualism, materialism, dogmatism.

Reign of Laissez Faire.—Distress incident to the French Revolution, Napoleonic wars, agricultural depression, vicious poor laws, disordered and corrupt government, requirements created by industrial revolution and rapidly rising capitalistic forms of enterprise for mobility of capital, labor, goods, freedom of contract and trade, were moulding conditions for liberal economic doctrines. Malthus (1798) supplemented the work of Smith and enlarged the basis of economics with doctrines concerning population. He shows that population tends constantly to increase faster than subsistence, that excessive population must be prevented by prudence or removed by famine, misery, war—a pessimistic alternative which colonial enterprise and improved processes have hitherto helped to avert. Ricardo (1817) gave Smith's doctrines an exposition and precision which, serving then dominant interests, assured short-lived triumph to *laissez faire.* Assuming perfect competition, freedom, knowledge of self-interest—which assumptions others generally misinterpreted as conforming with facts—he deduced conclusions which seemed incontrovertible laws of an almost exact science.

In the capitalistic, wage-contract system of

production, Ricardo explained distribution as the main problem. First acceptably formulating the theory of rent, he made it the keystone in distribution. Rent of any piece of land is its excess-product over that of an equal area of the least productive land in use, equal capital and labor being applied to both. The cost of produce from the least productive land actually cultivated determines price. Ricardo's quantity-of-labor theory of value connected with Malthus' theory of population makes this decisive. Wages are the cost of subsistence of laborers according to their standard of living. Cost of subsistence depends on cost of production on marginal land. Profits are the residuum—vital in social importance as a source of future capital. The benefits of international trade arise from applying between nations the advantageous division of labor, which Smith showed is limited by extent of the market. Vital to Ricardo is the application of a cost-of-production theory to goods and to labor. Rejecting the physiocratic view of Smith, Ricardo ascribed to manufactures productivity equal with agriculture. Agriculture, manufactures, and commerce became coördinate and the conception of "productive labor" became increasingly comprehensive. Ricardo's successors elaborated, refined and supplemented his main theories. Doctrines concerning wages-fund (Senior) and non-competing groups (Cairnes) in determining wages became central. The law of diminishing returns (*see*) was further elaborated. J. S. Mill based value on supply and demand (*see*), correspondingly revised applications of the cost of production theory, and reconstituted the liberal system into its most acceptable form. Prosperity of Britain helped to give liberal doctrines vogue in other countries. Preëminent representatives were J. B. Say in France, and Rau in Germany. Optimists (Bastiat, Carey) rendered them attractive by rejecting diminishing returns, adopting a cost-of-reproduction theory of value and ascribing their universality and beneficence to harmony of nature.

Reaction: Socialism; Nationalism; Historical Movement.—Deplorable conditions in factories and mines and disappointment of nations overshadowed by British industrial and commercial supremacy powerfully favored reaction. Various writers—on social, humanitarian, methodological grounds—early assailed liberal doctrines, rejecting the assumed identity of individual and social interests and distinguishing between individual and social wealth (Lauderdale), opposing capitalistic theories of production and distribution which justified exploitation of labor (Sismondi), and indicating the viciously abstract nature of reasoning (Richard Jones). Reaction followed three main lines: (1) socialism, (2) nationalism, (3) historical movement. (1) Early socialists were idealists drawing inspiration from Utopists. Under the leadership of Rodbertus and Marx, aggressive socialistic theory crystalized about the idea of "surplus value" created by labor, withheld by capitalist employers, concealed in the process of money-exchanges, made possible by a juristic system supporting private property in land and capital, and a wage-contract system of production. These were conclusions from narrow interpretation of Ricardo's cost-of-subsistence wage theory resting on the Malthusian conception that higher wage provokes increased population, competition and consequent reduction of wage to subsistence standards—an "iron law" of wages. They stimulated critical analysis of wage-contract, unearned increment, functions of capital, management, labor; emphasized historical-juristic aspects of property, the social aspect of production, and importance of distributive justice. (2) Nationalists (Müller, List) repudiated excessive individualism, cosmopolitanism, consequent universality and unreality of liberal doctrines, proposed instead a "political economy of nations" with the state a necessary, unifying, regulative and protective agency. National well-being requires symmetrical development of agriculture, industries, commerce, intellectual and moral as well as material well-being; hence a national protective policy for backward industries and for labor. Correct policy and principles vary with stages of development and historical conditions. International free trade favors nations of advanced industrial development at the expense of industrially backward nations. (3) The "historical" movement (Roscher, Hildebrand, Schmoller), closely allied with nationalism, sought, primarily, to reject the negative political philosophy of liberalism, substituting, therefor, positive, evolutionary conceptions of Comte and Hegel; to discredit the abstract, deductive, dogmatic methods of liberal economics; to proceed by induction, substituting data derived from historical comparison for imaginary postulates; to subtitiute national for universal conceptions, including ethical with material considerations in formulating national policy, and utilizing the state as an agency of progress. Though one-sided, it became a powerful corrective of liberal method and doctrines.

Re-Construction; Present Tendencies.—Meanwhile, psychological analysis was reconstituting on a subjective (utility) basis the theory of value, moving consumption to the forefront, using the marginal concept to clarify the analysis of consumption, production and distribution, extending application of the law of diminishing returns to all productive enterprise. In this work—led by Jevons, Walras, Karl Menger, Wieser, Boehm-Bawerk, Marshall—the deductive method predominates; but premises are sought in actual facts, consideration being given to the psychological nature of man, the social nature of production, the regulative functions of government, and consequent urgency of distributive justice. Present recon-

struction of economic theories on a better apprehended value concept utilizes both critical and positive contributions of all preceding doctrines. Tendencies are towards: (1) elimination of traditional distinctions between rent and profits, because (a) profits often include an element—due to superior efficiency or fortuitous circumstances—which is analogous to rent, and (b) in settled countries rent incomes are rapidly capitalized; (2) ascribing to productivity larger influence in determining wages; (3) ascribing to combination increasing—to competition diminishing—influence in determining wages, profits, conditions of production; (4) recognition of necessity of government regulation of more and more enterprises "affected with a public interest," and for corresponding modifications in theory.

See CAPITAL; COMPETITION; COST; DISTRIBUTION; DIVISION OF LABOR; ECONOMIC HISTORY OF UNITED STATES; EXCHANGE; FREE TRADE AND PROTECTION; MERCANTILISM; PRICE; PRODUCTION; PROFIT; RENT; SOCIALISM; TRADE; VALUE; WAGES.

References: L. H. Haney, *Hist. of Economic Thought* (1911) J. K. Ingram, *Hist. of Pol. Econ.* (1894); L. Cossa, *Introduction to the Study of Pol. Econ.* (1893); J. Bonar, *Philosophy and Pol. Econ.* (1893); E. Cannan, *Hist. of Theories of Production and Distribution* in *English Pol. Econ., 1776–1848* (2d ed., 1903); L. L. Price, *Short Hist. of Pol. Econ. in England* (1896); W. J. Ashley, *Introduction to English Econ. Hist. and Theory* (1892), ch. iii (mediaeval); E. Nys, *Researches in Hist. of Econ.* (1899), ancient and mediaeval period; R. T. Ely, "Past and Present of Pol. Econ." in Johns Hopkins Univ., *Studies* (1884); H. J. Davenport, *Value and Distribution* (1908); C. Gide et C. Rist. *Histoire des Doctrines Économiques depuis les Physiocrates* (1909); J. Rambaud, *Histoire des Doctrines Économiques* (3d ed., 1909); A. Espinas, *Histoire des Doctrines Économiques* (1892); H. Eisenhart, *Geschichte der Nationalökonomic* (2d ed., (1901); A. Oncken, *Geschichte der Nationalökonomie, Zeit vor A. Smith* (1902); G. Schmoller, *Grundriss der Allgemcinen Volkswirtschaftslehre* (1908), Pt. I, Introduct., III, 75–125; H. v. Scheel, in Schönberg's *Handbuch der Pol. Oek.*, (4th ed., 1896), 85–144; current theory is presented by A. Marshall, *Principles of Econ.* (6th ed., 1910); F. W. Taussig, *Principles of Econ.*, (1911). E. H. VICKERS.

ECUADOR. Republic—originally the Province of Quito—was in 1542 attached to the viceroyalty of Peru, then passed to the viceroyalty of New Granada, back to Peru, and again to New Granada. Independence from Spain was threatened in 1809 and accomplished in 1822. The region was at first incorporated with Greater Colombia, but became the Republic of Ecuador in 1830. It lies between latitude 1° 56′ north and 5° 30′ south, and longitude 69° 52′ east and 80° 35′ west (Greenwich) with an area of 116,000 square miles, although this may be changed when the boundaries are settled, and a population of 1,500,000, about 13 per square mile. The present constitution was adopted in 1906, and provides for a centralized government. The legislative branch consists of a senate and a ehamber of deputies, the former of two senators for each province, elected for four year terms, the latter of a representative for every 30,000 inhabitants, elected for two year terms, both chosen by direct vote. The executive branch is a president elected for four years by direet vote. In case of disability he is succeeded by the presiding officer of the senate. There is a cabinet of five members: interior and public works; of foreign affairs and justice; of treasury and public credit; public instruction, posts and telegraph; war and marine. There is also a council of state of 14 members. The judiciary is a supreme court of five judges elected by congress for six years terms, with minor courts. The republic is divided into sixteen provinces and one territory, with governors appointed by the president. The capital is Quito. State religion is Roman Catholic. **References:** J. I. Rodriguez, *Am. Constitutions* (1905), II. 277–315; Pan American Union, *Publications.* A. H.

EDMUNDS, GEORGE FRANKLIN. George F. Edmunds (1828–) was born at Richmond, Vt., February 1, 1828. In 1849 he was admitted to the bar, and from 1854 to 1859 was a Republican member of the legislature, during the last three years serving as speaker. In 1861–62 he was a member of the state senate. In 1866 he was appointed United States Senator to fill a vacancy, and held his seat by successive elections until 1891, when he resigned. His preëminent standing as a lawyer made him one of the most influential members of the Senate. In the reconstruction period he was eonservative, but supported the Republican programme. He was the principal author of the electoral commission act of 1877, and a member of the commission; author of the Edmunds Act of 1882 for the suppression of polygamy in Utah, and of a further act of 1887 on the same subject; the principal author of the electoral count act of 1886; and one of the framers of the anti-trust act of 1890. In 1880 he received 34 votes for president in the Republican national convention, and 93 votes for the same office in the convention of 1884. In 1897 he was made ehairman of the monetary commission created by the Indianapolis monetary conference. See ELECTORAL COMMISSION; POLYGAMY; REPUBLICAN PARTY. **References:** E. E. Sparks, *National Development* (1907); D. R. Dewey, *National Problems* (1907). W. MACD.

EDMUNDS ANTI-POLYGAMY BILL. A bill of Congress dated Mareh 22, 1882, which applied to "a Territory or other place over

which the United States have exclusive jurisdiction." It defined simultaneous marriages as bigamy, made the practice of polygamy a misdemeanor and disfranchised those guilty of the practice. O. C. H.

EDUCATION, AGRICULTURAL. Genesis.—Three-fourths of a century ago began the system of legislative enactments for special schools or colleges, and it largely took the form of charters to stock companies that were thereby authorized to engage in agricultural education. The first college of agriculture wholly supported by public funds was the Michigan Agricultural College, opened in 1857, closely followed by Maryland. The widespread movement for educational training in agriculture culminated in the Morrill Land-Grant Act (*see*), July 2, 1862, appropriating public lands to the amount of 30,000 acres for each Senator and Representative in Congress to "the endowment, support, and maintenance of at least one college [in each state] where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts." The result has been a noble chain of agricultural and mechanical colleges, supplemented by subsequent national and state grants, and reinforced by a chain of agricultural experiment stations (*see*). They are rapidly putting agricultural and rural subjects into pedagogical form, and are demonstrating that such subjects may have educational and training value equal to that of the historical subjects.

Agricultural Colleges.—An act of August 30, 1890, appropriated $25,000 to each state "to be applied only to instruction in agriculture, the mechanic arts, the English language and the various branches of mathematical, physical, natural and economic science, with special reference to their applications in the industries of life, and to the facilities for such instruction;" each to report to the Secretary of Agriculture and to the Secretary of the Interior a detailed statement of the moneys received and of their disbursement. The Nelson Act of March 14, 1907, appropriated an additional $25,000 to each state to be applied for the purposes of the agricultural colleges as defined by the two preceding acts; but allowing the institutions to use a part of the money for providing courses for the special preparation of instructors for teaching the elements of agriculture and the mechanic arts. In 1912 a third supplementary bill for the appropriation of moneys for extension work was introduced but not enacted. By the act of 1862 "no portion of said fund, nor the interest thereon, shall be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or building"; housing facilities were to be provided by the several states and territories. In about one-half of the states the land-grant college or institution was established as a part of the state university. In the other cases, either a new institution was created outright or the funds were applied to existing institutions which were then incorporated into a college of agriculture and mechanic arts. In Massachusetts, the fund was divided between the Agricultural College and the Massachusetts Institute of Technology, one part being used as an endowment for agricultural work and the other part for mechanic arts.

At the beginning of the experiment, the separate colleges of agriculture gained most headway, largely because they were free to carry out new or special educational policies. But even so, the mechanical and customary subjects first assumed prominence and in most cases the agricultural work for many years occupied even a subordinate part. The demand for agricultural instruction of college grade had not yet risen, and the constituency remained small, and there was a lack of harmony between the agricultural and the other parts of the institution, because the agricultural work was new, untried, and not well organized. This period of experiment and growth has now (1913) practically passed. The diffierent states are beginning to appropriate funds for the support of the institutions, in many cases far exceeding the amount received from the proceeds of the land-grant sales.

Enlargement of Agricultural College Functions.—The leading colleges of agriculture are now organized on a very broad basis, comprising regular academic teaching, experiment station or research work, and extension work with the people of the state. They are touching the problems of country life, rather than merely teaching certain subjects to students who matriculate in the institution. Eventually, a college of agriculture that represents its state must give instruction in all the agricultural arts and industries, and also in the various elements or parts of a farm organization. It must also teach the applications of mechanics, machinery and engineering to agricultural practice and development. If these institutions are to reach the rural situation, they must improve the country home as well as the country business; therefore, departments of home economics are developing in them. The extension work of the colleges of agriculture represents some of the best welfare effort that is now being undertaken in the United States. Its purpose is to reach both adults and youths on their own farms and with their own problems, and to carry the outlook of a greater efficiency and a better endeavor into the country districts.

Schools of Agriculture.—The movement to open the schools to agricultural and rural subjects has now become not only widespread but has already brought substantial results. By one process or another, practically all the pub-

lic school systems of the United States are now open to teaching by means of agriculture, although a relatively small proportion of the schools is yet actually engaged in teaching it. In some of the states special or separate schools of agriculture and the domestic arts have been established; sometimes on a county basis as in Wisconsin; sometimes on a congressional district basis, as in Alabama; and sometimes without particular plan as to districting, as in New York. The normal schools in many parts are beginning to train teachers for agricultural and country life work. Some of the denominational and endowed institutions are also beginning to add agriculture to the curriculum.

The few training schools for agriculture, including horticulture, so far established in the country are beginning to prove themselves and to indicate that there will probably be a large development of similar institutions probably following in some ways the line of development of the various trade schools.

Basis of Government Aid.—The interest of the public in agricultural education is the welfare interest of rural civilization as a whole; it is the province of government to aid agricultural and rural affairs by means of education. Considered in its occupational bearings, the aid that government gives to farmers by means of education is only a fair off-set for the special privileges that are allowed to other groups of people. The agricultural peoples represent the background of civilization. Governmental aid by means of education rather than by means of special opportunity or favor, should in the end produce the best type of result.

See Agriculture, Relations of Government to; Education as a Function of Government; Schools, Public, Professional; Schools, Summer; State Universities.

References: L. H. Bailey, *Cyclopedia of Am. Agriculture* (1909), IV, 355–477, *Training of Farmers* (1909); E. Davenport, *Education for Efficiency* (1909); K. L. Butterfield, *Chapters in Rural Progress* (1908); U. S. Department of Agriculture, Office of Experiment Stations, *Publications; Am. Year Bk., 1910,* 479–482, and year by year. L. H. Bailey.

EDUCATION AS A FUNCTION OF GOVERNMENT.

Public Interest in Education.—Out of the state and local expenditure in the United States, about one-fifth goes every year to education, because of the general belief that education increases the happiness of the individual, helps to keep the state secure, and raises the productivity of the people. Public education extends in many communities from the kindergarten to the professional school.

The conception that the state must make sure that part of the youth be educated, is as old as western civilization; but it has been extended in the nineteenth century to include the following principles: (1) that every child, boy or girl, should have a simple education; (2) that the state must offer that education to every child; (3) that the state must see to it that private schools are educative; (4) that secondary education without tuition shall be open to all qualified boys and girls; (5) that free public college and university instruction shall be offered to all those who will avail themselves of it; (6) that the state shall have an organized administrative department devoted to the purpose of education; (7) that in addition to formal schools, the state shall maintain other educational influences, such as libraries, museums and public theatres. No country realizes all of these aims. In the United States perhaps a larger number are carried into effect than elsewhere in the world.

Genesis of Common Schools.—Down to the middle of the eighteenth century, English education meant substantially boys' education; girls of educated families were taught to read by their mothers or by tutors, or in dame schools; while some boys had day or boarding schools, for the most part attached to churches. Many schools in England were endowed. At the epoch of colonization there existed many town schools, all of them presumably levying fees upon the scholars.

The English colonists, who had no considerable towns or inherited wealth, early began to found schools of the town type. In Massachusetts, Connecticut and Virginia, the early colonial legislatures made provision for local schools, the buildings constructed out of public money, and the teachers appointed by public authority. In all of them the term "free schools" was used although parents who were able were expected to pay fees.

Meanwhile a system of general common schools was worked out in New England, to which, after the Revolution, girls were admitted. These schools were poorly housed, often poorly taught and had only a scanty number of school days in the year. There was no requirement that children should go to the schools thus provided. After 1800 the system spread to New York and Pennsylvania; and it was introduced into all the northwestern communities as they were organized. Some efforts were made to introduce rural schools in the South previous to the Civil War, but there was no general system of that kind till the reconstruction epoch except, perhaps, in North Carolina.

Genesis of Public Secondary Education.—Secondary education in the colonial period

could be had only in a few favored schools in favored places, like Boston, New York and Philadelphia; but numbers of boys were prepared for college by the local ministers. About the time of the Revolution sprang up the academy for boys and the boarding school for girls. In New England, later, came some mixed academies, which served the neighborhoods of the towns where they were placed, and received boarders. After 1820 were instituted public high schools, first for boys, then a few for girls, then, in many places, mixed schools (*see* COEDUCATION). They have spread until there are now about six thousand in the United States.

Alongside the common and high schools normal schools were developed, some of them private, most of them founded by the state for the training of public school teachers; graded schools were made possible by the growth of cities, which furnished large numbers of children of like ages. The normal school provided a supply of teachers for the grades and made teaching a profession for women. The graded schools required large buildings, and made constantly growing demands upon the town and city finances.

Genesis of Public Higher Education.—Three of the seventeenth century colonies set up colleges—Harvard, William and Mary and Yale—all of which had some aid from the colonial government; and a later group of pre-revolutionary colleges, such as Princeton and Kings (now Columbia) had a little public aid. The first state to found an institution which later developed into a university (*see* STATE UNIVERSITIES) was North Carolina, in 1789; the first actual state university built and supervised by the state was the University of Virginia, open to students in 1825; the first western state to lay the foundations of a university was Michigan in 1838; other states followed, and in 1862, the development of such institutions was stimulated by the Morrill Land Grant (*see*) made by the Federal Government in aid of agricultural colleges. Every state in the union received land scrip. Some of them added these new resources to the proceeds of public taxation in a large general institution, such as the Universities of Wisconsin and Illinois; others established separate technical or agricultural colleges. Some states, like Colorado, have three or four different public institutions of the higher learning. Every state in the Union has some form of public college and university, with instruction open free of tuition to residents of the state; and frequented also by students from other states. None of the states has a public theological seminary, but most of them furnish professional education in law, medicine, engineering and science of teaching (*see* SCHOOLS, PUBLIC, PROFESSIONAL).

Justification.—What is there in the nature of the state and in the recognized governmental system of the United States to justify this system of public education? The first justification is the active moral effect of education; it diminishes poverty, intemperance, and crime. The communities that have the best schools and the lowest percentage of illiteracy are commonly the securest in life and property, and most abound in churches, libraries and other instrumentalities of uplift. Education does not suppress crime; some crimes, as for instance, forgery, can be committed only by educated persons; but it puts within the mind objects of thought interests and standards other than the material and the carnal.

Another argument is the refining influence of education, and its transfer from age to age of the stored up wisdom of mankind. American children from the earliest years study the literature of two great branches of the Anglo Saxon race, and in the higher grades the literature of other tongues. The schools help to keep active the art of expression in the mother tongue.

Another reason for public education is the protection of the ignorant, who are enabled to understand simple accounts, to know what is going on about them, and to communicate their thoughts by writing.

Subdivision of School Funds.—In most of the states of the Union, school taxes are assessed upon the same property as other direct taxes, and the proceeds go into state or local funds, all of which are spent for the pupils as a body. Childless capitalists and corporations pay school taxes without question. In some of the southern states it has been proposed (and in a few of them, particularly Kentucky, such law has been carried out) that the negro schools shall receive only the school taxes levied on the property of negroes, reserving for white children the main body of the taxes. This practice seems to be increasing, and rests upon the theory that it is not to the interest of the community that negro children should have equal school advantages with white children. It thus deprives of educational opportunities precisely that part of the population which most needs them. The ordinary theory is that the schools exist for the general benefit of the community by increasing the productive capacity of the people and training them and fitting them for habits of order and obedience to law. In any rich state in the Union, 10 per cent of the people pay 90 per cent of the taxes; and the idea of subdivision onee carried out would paralyze the effectiveness of the American schools.

Regulation of Private Schools.—Many of these advantages might be had from private schools; and in every state such schools are recognized as sufficient for those who choose to resort to them and can pay the expenses. Great numbers of youth are educated in church schools. The Roman Catholics, Lutherans and

some other Protestant sects object to the "godless public schools" and at great expense have built, equipped and carry on, parochial or boarding schools for their youth. They protest against being taxed for public schools to which they do not send children; and in some states they are, in addition, taxed upon their own school property, as being private. For many years, there raged a controversy over "the Bible in the public schools" which turned upon the once almost universal habit of beginning school exercises with reading from the King James version of the Bible, and a word of prayer by the teacher. This is considered by Catholics to be a Protestant service.

In other countries, particularly France, the state takes a responsibility for the private schools and even for tutors by prescribing the subjects to be taught and insisting that the teachers shall hold state certificates. Almost the only instance of such supervision in the United States was an act passed by the legislature of Wisconsin in 1889, which laid down the principle that English must be used as the vehicle of teaching in private as well as public schools; but this so-called Bennett law (*see*) was repealed the next year. In many states there is no compulsion of attendance and in some states the schools required by law are not established in very thinly settled districts, or in districts inhabited by a low and ignorant class of people.

Training of the Voter.—A main reason for public education is the desire to educate the voters, a thing especially necessary in a republic. In 17 states no one is allowed to vote who cannot show that he can read and write, and in some southern states education is accepted as a qualification for those who have not the otherwise necessary tax qualifications (*see* SUFFRAGE). The Australian ballot (*see*) which is now required in almost all the states, is difficult to use except by a voter of some education; and where the Massachusetts plan is adopted of arranging candidates in an alphabetical order, the illiterate voter can make no headway. A few self-taught individuals get into the legislature and Congress, but a large proportion of all public officials have had some education in public schools or colleges.

Training Through Higher Institutions.—Another object of public education is to furnish the means of training for an educated class. Education above the common schools long had for its prime object the general culture of the recipient. In the early state universities the proper education was thought to be chiefly the study of Greek, Latin and mathematics. In the last thirty years, the state universities, and behind them the public secondary schools, look for what they consider a more practical type of studies: "Latin scientific courses" and "modern language" courses divide the choices of students with the old classical course.

In order to obtain popular support for public colleges of arts, it became necessary to prove to the community that the university was rendering a direct public service. Hence in the mining states schools of mining engineering were established; in the great farming states schools of practical agriculture were founded and university professors analyzed soil, planted and compared seed; and they convinced the tax payer that the public university enabled the state to get out more ore for less cost, and to raise a larger crop from less exhausted lands. In such states the whole system of education, common school and grades, secondary schools, normal schools, universities and technical schools are fitted together. University graduates, men and women, teach in the high schools; high school graduates fill up the universities; numbers of public men are graduates of the state university, and the result is an active public sentiment which shows its confidence in the universities and the lower schools by large public appropriations.

From state as well as endowed institution comes an increasing body of educated specialists, experts in electrical engineering or health or manual training, who either as public officials, or as professional men at large, extend and record a rapid gain in the world's knowledge of itself. Public education, therefore, has its share in the advance of civilization.

Administration of the Schools.—One of the important functions of public education is to look after itself. Nearly every state in the Union has its superintendent (*see*) or other educational functionary, who plans systems, establishes new types of schools, examines teachers and otherwise keeps the machinery in order. Cities almost invariably have a professional superintendent of schools, and in many states there are county superintendents (*see*). Some states have a state board of education (*see*), usually with little power of direct initiative, but the practical duty of impressing the need of liberal appropriations upon the legislature.

Most cities, counties, townships and school districts have a governmental system, elected apart from other public officials, having the power to lay and apply taxes for education. In the whole system of American government no function is so separated from the regular governments as is education. This is due in a large degree in a desire "to keep the schools out of politics." In many states there is a fixed educational tax giving a stated proportion of the public income to the schools, an income which therefore increases automatically as the valuation of taxable property grows

Federal Education.—The Federal Government maintains schools of the college grade for the education of officers for the Army and Navy, including the war colleges (*see*) for the further training of experienced officers; and in the

manoeuvres of the regular troops and also of militia under federal supervision, attempts to teach the common soldiers the arts of war. The Federal Government also maintains schools in the District of Columbia, and provides for the supervision of schools in dependencies. It appropriates for the partial support of state agricultural colleges (*see*) and experiment stations (*see*). Beyond that, its general educational function is the collection of statistics and examination of systems of schools throughout the whole under the general direction of the Commissioner of Education.

In addition to the payment of teachers of public schools, many cities, partly out of the public treasury and partly by contributions from the teachers themselves, provide civil pensions (*see*) for teachers who have been long in service. For professors in some of the state universities retiring allowances are assigned by the Carnegie Foundation for the Advancement of Teaching.

See Democracy and Social Ethics; Illiteracy; Libraries, Public; Text Book Laws; and under Education; Schools.

References: C. A. Beard, *Am. Government and Politics* (1910), §§ 624–627, 746–751; F. E. Boulton, *Principles of Education* (1910); James Bryce, *Am. Commonwealth* (4th ed., 1910), ch. i, 461, 623, 631; E. V. Dexter, *Hist. of Educ. in the U. S.* (1904), II, ch. cviii; E. E. Brown, *Making of Our Middle Schools* (1903), *Government by Influence* (1910); A. S. Draper, *American Education* (1909); G. H. Palmer, *Ethical and Moral Instruction in Schools* (1909); J. W. Jenks, *Citizenship and the Schools* (1906); C. W. Eliot, *Am. Contributions to Civilization*, (1897); A. B. Hart, *Studies in Am. Educ.* (1895), *Actual Government* (rev. ed., 1908), ch. xxxviii, *National Ideals Historically Traced* (1907), ch. xxi; R. G. Boone, *Education in the U. S. since the Civil War* (1910); *Am. Year Book, 1910,* 782, 803, and year by year; bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912), §§ 189, 200, 225; A. B. Hart, *Manual* (1908), § 124.

Albert Bushnell Hart.

EDUCATION, BOARD OF. The body governing the schools of local units such as cities, towns, townships, and districts, and even counties, is differently designated in different parts of the country: board of education, school board, school trustees, district board, school directors, and school committee (New England, Delaware, and North Carolina). Such a board, particularly in the districts, towns, and townships, is in the majority of cases composed of three members elected by the people for a term of two or three years. Membership varies from five to nine and even 12; and the term varies from one year to four, five, and six years. In a few states, as in New York and Indiana, in place of a board, the district may have a single trustee. Leaders of educational thought now generally favor the town or township organization, holding it to be more economieal and efficient than the district system, and advocating a board of three members with terms of three or four years.

The county boards are usually supplementary to the office of county superintendent, serving in an advisory or coöperative capacity in the making of courses of study, examining teachers, and controlling school property. In certain of the southern states, *e. g.*, Maryland and Florida, the county board of education is the chief authority in the management of the schools of the county.

The city board of education, or school board, is, as a rule, a much smaller body than formerly. From a membership of large size, with a tendency to become a debating body, the boards have been reduced to a size adapted to businesslike administration through sub-committees. The membership of the Boston board was 116 in 1874, then reduced to 24, and still later to 5; Baltimore has changed from 29 to 9; Indianapolis from 11 to 5; Milwaukee from 36 to 21. Chicago has a board of 21, and the Board of Education of the City of New York has a membership of 46 (Manhattan, 22; Brooklyn, 14; Bronx, 4; Queens, 4; and Richmond, 2). While some city boards are elected at large, many are appointed by the mayor of the city. Both in the country and in the city women have been widely granted the franchise in the election of school officers, and city boards frequently have one or more women in their membership, on the accepted principle that such boards should represent the different kinds of ability in the community—business, professional, industrial, and the like.

School boards are as a rule unpaid, but here and there are exceptions like Rochester, N. Y., the 5 members of whose board are each paid $1,200 per year. The objection urged to the payment of boards is that such payment opens dangers of getting inferior, self-seeking men and of producing conflicts with professional heads of the school system. Boards in large cities work through committees, the most important being those on education or curriculum, teachers, finance, and buildings; such committees frequently have under them large corps of subordinates who are expert and highly paid.

The duties of boards of education ordinarily include the construction and upkeep of buildings, the purchase and sale of lands, the providing of supplies, the management of school property, the employment and dismissal of teachers, the discipline of pupils (usually through the superintendent or the principals), the appointment of truancy and probation officers, the levying of a local school tax, and the making of an annual report. In different states, according to their laws, these boards may prescribe the course of study and text-

books for the pupils, conduct examinations for teachers, change district boundaries, and consolidate schools.

See EDUCATIONAL ADMINISTRATION; TRUSTEES AND REGENTS; and under SCHOOL.

References: S. T. Dutton and D. S. Snedden, *Administration of Public Educ. in the U. S.* (1909), chs. vi–ix; Supt. of Pub. Instruction of Illinois, *Twenty-eighth Biennial Report* (1908–1910), 320–358.

KENDRIC C. BABCOCK.

EDUCATION, BUREAU OF. The federal Bureau of Education was created by an act of Congress approved March 2, 1867, as an independent department of education, in response to the urgent request of the National Association of State and City School Superintendents. In 1869 it was given its present status as an office or bureau of the Department of the Interior, under a commissioner whose salary is $5,000 (1913). The functions of the bureau are defined in the act of 1867: "To collect statistics and facts showing the condition and progress of education in the several States and Territories, and to diffuse such information respecting the organization and management of school systems, and methods of teaching, as shall aid the people of the United States in the establishment and maintenance of efficient school systems, and otherwise promote the cause of education throughout the country." The commissioner is required to make an annual report embodying the results of his investigations and his recommendations. The commissioners have been: Henry Barnard, 1867–1870; John Eaton, 1870–1886; N. H. R. Dawson, 1886–1889; William T. Harris, 1889–1906; Elmer E. Brown, 1906–1911; and P. P. Claxton, 1911– .

The work of the bureau is distributed among nine divisions, each under a chief with a force of clerks. The total service of the bureau, excluding those working regularly in Alaska, includes 55 persons. The Division of Correspondence deals with all mail received, and with the filing and indexing of all letters. The Division of Editorial Work directs the printing and the publications of the bureau, which consist of: (1) the *Annual Report* of the Commissioner; (2) *Special Reports*; (3) *Circulars of Information;* (4) *Bulletins.* The whole number of documents now runs beyond 510. It is also in charge of gathering information relative to education in foreign countries and the conduct of correspondence with foreign inquirers. The Library Division has charge of the library, a great specialized collection relating solely to educational topics. The library contains about 55,000 bound volumes and 80,000 unbound pieces; it is probably the best collection of its kind in the United States, and is open freely to all investigators. The Alaska Division has direction of the 77 schools for natives (with an enrollment in 1910 of 3,964) maintained by the United States in Alaska; 113 teachers and physicians are engaged in this work. This division also has charge of the government reindeer which were introduced into Alaska for the benefit of the natives, by means of appropriations made by Congress beginning in 1893.

The Statistical Division directs the collection and preparation for the *Annual Report* and for other publications of the bureau, of a large variety of statistical information, especially that relating to elementary schools, high schools and private secondary schools, and schools for colored pupils. The Division of School Administration confines its work to city and state systems, industrial education, the certification of teachers, and the legislation affecting these. The Division of Higher Education has charge of the statistics, information, and investigations regarding universities, colleges, technological schools, normal schools, and professional schools. To this last division falls, by direction of the Secretary of the Interior, the general oversight and certification of the expenditures of the federal appropriations under the acts of Congress of 1890 (second Morrill Act) and 1907 (Nelson Act) for the benefit of the colleges of agriculture and the mechanic arts, commonly known as the land-grant colleges. These institutions now number 66 (including 16 separate institutions for colored students) in the several states and territories, and receive annually a total of $2,500,000 from the United States Treasury, for the purposes defined in the acts of 1862, 1890, and 1907. The division of Rural Education, with a corps of field mem- and the division of School Hygiene were recently organized.

The Bureau of Education serves, not only as a great central office for gathering, coördinating and publishing statistical and other information concerning the country as a whole, but since the early years of its existence it has supplemented its regular staff by coöperation with the ablest observers and investigators in the country, in order to present in authoritative form data relating to widely various phases of education in foreign countries, as well as in the United States. Notable among the publications concerning the different states is the series of monographs (1887–1903), *Contributions to American Educational History,* being studies by different scholars of the history of education, (or of higher education only, in some cases), in thirty-five states. The latest development in the expansion of the service of the bureau is the permanent appointment of experts or specialists in the following fields: school administration; land-grant college statistics; higher education; rural education; and school hygiene. These men who combine practical experience with the highest training divide their time between the office of the bureau in Washington and those

parts of the country to which their own researches and duties, or the calls of a state, a city or an institution, desiring an investigation or counsel, may take them.

See EDUCATIONAL ADMINISTRATION; EDUCATIONAL STATISTICS.

References: U. S. Commissioner of Educ., *Annual Report, 1907; Am. Year. Book, 1911*, 801, and year by year.

KENDRIC C. BABCOCK.

EDUCATION, COEDUCATIONAL AND COORDINATE. See COEDUCATION AND COÖRDINATE EDUCATION.

EDUCATION, COMPULSORY. The princiciple of compulsory education has been recognized at intervals in history ever since it was made prominent in the laws of Solon and Lycurgus. Charlemagne and Luther were advocates of the idea. Self governing communities have assumed the right to protect themselves from the dangers of ignorance. With the extension of suffrage has come the necessity for education, and universal suffrage cannot logically exist without compulsory education.

Early Laws.—The earliest law for compulsory education within the territory of the United States was probably that in Virginia in 1646 which "enjoined" overseers and guardians of orphans to educate them. Fiske says: "There was after 1646 a considerable amount of compulsory primary education in Virginia."

B. G. Northrup, secretary of the Board of Education for Connecticut, says in his report for 1871, "Connecticut was one of the first states in the world to establish the principle of compulsory education. Its code of laws adopted in 1650 contained provisions for compulsory education. In 1869 a Connecticut law forbade manufacturers to employ children under 14 "who have not attended school at least three months each year." In 1872 Connecticut fully established compulsory education.

Massachusetts, in 1642, enjoined selectmen to see that children and apprentices were able to read English. In 1834 children under 15 who did not attend school three months each year were prohibited from factories. A formal compulsory education law was passed in 1852 fixing 12 weeks each year as a minimum of attendance, 6 of which must be consecutive. In 1870 the period was extended to 20 weeks.

Exceptions.—The earlier compulsory education laws in New England, as well as elsewhere, were found difficult to enforce fully, because officers were not appointed whose chief duty was for this purpose, and because of the loophole offered by "exceptions" such as, "children otherwise furnished with means of education," in the Massachusetts law of 1852, and elsewhere "those attending private and parochial schools," were excepted though their attendance could not be easily ascertained. In many instances the legislation was in advance of public opinion. Nearly all the states have recently endeavored to enact legislation which is enforceable. The existing legislation is summarized as follows: (1) compulsory education laws exist in 41 states; (2) seven southern states have no laws of this kind, but do have laws limiting child labor which operate indirectly toward giving an opportunity to attend school. (3) twenty-six of the states require attendance, for children between the prescribed ages, of the full term of the school year; and three additional states require the full term in large cities.

Truancy.—The best remedy for truancy not at present found in America, but working successfully in England is special disciplinary classes or day truant schools, partially industrial. In all the states having compulsory education laws fines or imprisonment are provided for recalcitrant parents. These vary from a minimum of $2 or two days imprisonment, in Delaware, to a maximum of $300 or six months imprisonment or both, in Idaho. In most states the maximum fine is $25. All states have child labor laws except Nevada and New Mexico but in these the compulsory education laws suffice on this point. The lowest age for child laborers in ten states is twelve years, the usual age is fourteen years.

An analysis of all these laws leads to the following deductions:

(1) The highest civilization demands, for the welfare of government, that all children should attend school until they are fourteen years of age or until a certain standard is reached.

(2) While in many states the minimum of compulsory attendance is as low as twelve or sixteen weeks (Kentucky is lowest, eight weeks) the tendency is to demand the full school year, twenty to forty weeks.

(3) Compulsory education cannot be properly enforced without the existence of special truant officers, possessed of police powers.

(4) The state must have the power and means of approving the quality of work done in private schools and of obtaining and preserving the record of attendance.

The first compulsory education law in Europe was in Brunswick. Prussia established compulsory education in 1732, Bavaria, one of the latest to act, in 1802. Most of the countries of continental Europe, except Russia and Japan, have laws for compulsory primary education; but in general they are not as strictly enforced as in Germany.

See EDUCATION AS A FUNCTION OF GOVERNMENT; EDUCATIONAL ADMINISTRATION; LIBERTY, LEGAL SIGNIFICANCE OF; TRUANCY; and under SCHOOL.

References: S. T. Dutton and D. S. Snedden, *Administration of Public Education in the United States* (1908); U. S. Commissioner of

Education, *Report*, 1909; *Educational Rev.*, IV (June, 1892), 47–25, IV (Sept., 1892), 129–141, XXXI (Apr., 1906), 383–394; Paul Monroe, *Cyclopedia of Educ.* (1911).

George E. Fellows.

EDUCATION, INDUSTRIAL. Definition.—Industrial education, as now generally understood in America, is that form of instruction which is designed to prepare for vocations in the industries. It differs from the ordinary manual training widely given in the public schools in that its aim is vocational and specific rather than cultural and general. Other branches of vocational education coördinate with it are professional, commercial, agricultural, and household. In recent years the tendency in this country has been to make the term practically synonymous with trade training. It, however, differs from trade training in that the latter does not necessarily include instruction in cognate academic subjects; nor the varied instruction given in the schools with a view to preparing for semitechnical industrial pursuits which cannot properly be classed as trades. Industrial education is therefore less advanced and less professional than technical education.

Industrial education may, in general, be divided into three types, according as the training is: (1) complete and preparatory to beginning immediately upon a journeyman's work at or near a journeyman's wage; (2) intermediate, or pre-apprentice, which is designed to give industrial intelligence and some degree of skill preparatory to apprenticeship; (3) supplementary to a vocation already entered upon in the industries.

Motives.—Though industrial training has been given in the schools of progressive European countries for many years, it is only during the last decade that America has been thoroughly awakened to the need of it. Several causes contributed to this awakening: (1) foremost, the growing conviction that American inventive genius and the present abundance of natural resources cannot always maintain industrial supremacy for this country, but that a higher degree of industrial efficiency must be developed; (2) a sense of justice which demands preparation for the prospective industrial worker proportionate to that which is now offered in the public schools to the boy who will enter a profession; (3) growth of the patriotic or social sense which recognizes that individual excellence promotes national excellence. The need of increased industrial efficiency has been accentuated by the decadence of the older indentured apprenticeship system and by the minute division of labor in large industries.

Development.—The new movement in this country first took definite form in the appointment of the Massachusetts Commission on Industrial Education in 1905. A law providing for a permanent commission and for the establishment of independent industrial schools followed in 1906. Since that time six other states have appointed similar commissions and thirty of the states have enacted laws on the subject. In some others existing laws have been construed as permitting industrial training to be given in the public schools. During the same period some seventeen national organizations have considered the subject at their meetings. Conspicuous among these have been the National Education Association, the National Association of Manufacturers, and the American Federation of Labor, all of which are committed through official action to the promotion of industrial training; and the National Society for the Promotion of Industrial Education, organized in 1906, and composed of the leading educators, manufacturers, and laboring men of the country.

Comparatively few public schools in the United States attempt to give in course a complete trade training, and the trend just now seems to be away from such endeavor. It is generally recognized that some experience under actual shop or factory conditions is necessary before a finished mechanic is developed. But endowed schools and those supported by tuition fees, more often than public schools, offer complete trade training.

Pre-apprentice training is making rapid headway in the country, and many believe that it should bridge the chasm which seems to exist in the American educational system between the age of fourteen, when most compulsory education laws relinquish control of the boy, and the age of sixteen when he is old enough to enter upon an apprenticeship; in fact much of the manual training is taking a more practical turn and serves as a good foundation for apprenticeship, though that is not its primary purpose.

Continuation Schools.—Supplemental industrial instruction for those already employed is the oldest and most common form of industrial education in the schools of this country. It was given at first only in the evening schools, but by a later development the part time, or "continuation" day school was established, in which those who are employed in industrial work are permitted to spend a part of the day. Schools of the latter kind are now a part of the public school systems of several of the larger and more important cities of the country, and are in process of organization in other cities. The plan was first introduced in 1906 in the engineering department of the University of Cincinnati, and was adopted two years later in a public high school at Fitchburg, Mass., where the plan involved working and studying alternate weeks. Each class was divided into two groups, one group working during the week spent in school by the other, receiving in the shop or factory stipulated wages for the work which was done under

actual shop or factory conditions. In Fitchburg, as in the University of Cincinnati, the term "coöperative course" is applied to the plan, but similar institutions elsewhere are usually called "continuation schools," after the German *Fortbildungsschule*.

Private Schools.—Without waiting for the public schools to develop industrial skill and intelligence suited to their business, some large corporations conduct at their own expense, apprentice schools giving instruction in both shop work and cognate academic subjects. The Young Men's Christian Association has also been a potent agency in the development of industrial education. In 1910 educational work, much of which was industrial in aim, was done in about 400 different local branches of this organization.

Comprehensive System.—A thoroughly organized system of industrial education comprehends: (1) hand training and some instruction about the industries, in the elementary schools; (2) intermediate, or pre-apprentice schools for boys from fourteen to sixteen; (3) trade training either in a regular trade school or in a continuation school; (4) evening schools in which instruction is given in theory and in subjects kindred to the industrial pursuit followed; (5) technical high schools in which preparation for the position of foreman and other semi-technical occupations may be made.

See EDUCATION, AGRICULTURAL; EDUCATION, RECENT TENDENCIES IN; and under SCHOOL.

References: P. H. Hanus, *Beginnings in Industrial Educ.* (1908); A. D. Dean, *Worker and the State* (1910); U. S. Bureau of Educ., *Bulletin*, No. 1 (1907); C. D. Wright, "Apprenticeship System in Its Relation to Indust. Educ." in *ibid*, No. 6 (1908); U. S. Commissioner of Labor, *Annual Reports*, 1912, "Trade and Industrial Educ." in *25th Annual Report*, 1910; Mass. Comm'n of Industrial and Technical Educ., *Reports* (1906–1908); U. S. Commissioner of Education, *Annual Report*, 1910, I, 223–253; Nat. Soc. for the Promotion of Industrial Educ., *Bulletins*, Nos. 1–14 (1907–1911); E. C. Elliott, *Industrial Educ.: Summary of Legislation* (1909), "Industrial Educ." in Am. Acad. Pol. and Soc. Sci., *Annals*, Jan., 1909.

W. R. HOOD.

EDUCATION IN FORESTRY. Public instruction in forestry is really an outgrowth of the necessity for trained men to care for national and private forests. During the pioneer period the forests were everywhere used in a wasteful manner. An investigation of the forest resources of the country reveals: (1) that we cut annually three and one-half times as much wood as is added by growth; (2) that two-thirds of all the timber felled by lumbermen is not utilized; (3) that one-eleventh of all forests are swept by fire annually, causing a damage for the last 40 years of $50,000,000 a year and many lives. In view of such results Congress, in 1891, authorized "forest reserves" renamed in 1907 "national forests." In order that the national forests be used so as to yield all their resources to the fullest extent without exhausting them, a thoroughly organized system of administration has been established. The demand for trained men for national and private service has led to the establishment of courses in forestry in about one-fourth of the state universities and state colleges, and courses of lectures on the subject are given in a few others.

Harvard, Yale and the University of Michigan each maintain a two years' graduate course in forestry. The undergraduate courses in the state colleges and universities generally provide work running through three or four years. The chief subjects taught aside from biology and engineering are silviculture, forest protection, forest measurements, forest mapping, forest management and lumbering.

The United States Government has, through the Department of Agriculture, undertaken to educate the people outside of schools and colleges in this important subject, by the publication and distribution of a great number of practical bulletins on the various phases of the subject.

See CONSERVATION; EDUCATION, AGRICULTURAL; FOREST SERVICE.

References: U. S. Dept. of Agriculture, Forest Service, *Circular*, No. 167 (1905); *Am. Year Book, 1910*, 495, and year by year.

GEORGE E. FELLOWS.

EDUCATION, MILITARY AND NAVAL. Special schools are maintained for educating officers for the Army and Navy, in order to combine discipline and the transmission of service traditions with the technical and scientific instruction required for the management of modern appliances and the acceptance of new inventions. Preparation for performing the duties of a subaltern is the natural aim in these; scientific knowledge must be included; and the military point of view is safeguarded by the appointment of graduates of the military and naval academies as instructors in all departments only after they have acquired the habit of command in active service ashore or afloat.

The entrance examinations are kept in relation with the progress of public instruction throughout the states, and the selection of candidates by a local competitive examination is found a relief by most of the officials entitled to nominate them. Many are rejected by the academic boards because of the strictness with which elementary standards are applied. The age-limit for West Point is from 17 to 22; for Annapolis, 16 to 20. Military cadets are at once commissioned as second lieutenants upon completing the course of four

years; and, since 1912, midshipmen are advanced to ensigns on the same footing.

Specialization and Unity.—During the decades of stagnation in military affairs which followed the Civil War the instruction given at the military and naval academies tended to become formal and retrospective; but the necessity of an advanced technology for the control of naval forces, powerful engines, and cannon charged with high explosives is incontestable; and specialization and post-graduate instruction have accordingly been recognized in both services. Annapolis now offers courses in steam-engineering, electrical and civil engineering, ordnance, and naval construction to officers who have served at sea; and naval constructors will hereafter be prepared for duty at the naval academy. Nevertheless, it is not held advisable to separate the specialists from the line of the Navy; and the absorption of the Engineer Corps in 1899 may be paralleled by the transfer of the constructors and even the paymasters, to the line. The Army is permanently divided into different arms; but the new Supply Corps has incorporated the quartermasters, commissaries, and paymasters; and the modern plan of filling staff positions by detail for short terms enlarges the experience of many officers and keeps specialists and staff officers in touch with service conditions. The practice of appointing the star graduates of the military academy to the Corps of Engineers, where their employment relates chiefly to matters outside the military profession, is, however, still maintained.

The advent, prior to 1901, of hundreds of officers who had received no military education led to the development of service schools of application under the supervision of the General Staff. Their work is coördinated and completed by a Staff College and by a War College where plans of campaign may be studied. The Navy has a larger variety of mechanical specialities; and seamen-gunners, machinists, and electricians, as well as clerks, cooks, bakers, and musicians, are instructed at various shore stations.

Agricultural and other schools and colleges throughout the country employ 87 retired officers of the Army as instructors; and 10 of these institutions are credited with superior courses in military science and art and allowed the annual nomination of a graduate for a commission in the regular Army.

Civil Life of Graduates.—Graduates of West Point and Annapolis often return to civil employments, and many of them were among the political leaders of the southern and western states before the Civil War. Many of those who returned to the service during that contest were promoted more rapidly than their comrades whose military employment had been continuous, political and other influences contributing to this result. Since 1865 graduates in civil life have engaged in industrial rather than political pursuits; and some of them have won distinction as scientists or inventors, particularly in relation to the progress of electricity.

Foreign systems of military and naval education differ from those of the United States chiefly in offering fewer advantages to youths aspiring to win a commission and in requiring evidence of continuous improvement in professional knowledge during active service. Examinations cannot be relied upon to secure this progressive and practical education; but employment may be adapted to that end.

See Army, Standing; Education as a Function of Government; Military Academy at West Point; Naval Academy at Annapolis; War Colleges.

References: L. Abeille, *Marine Française et Marines Étrangères* (1906), ch. vii; G. W. Cullum, *Biographical Register of the Officers and Graduates of the U. S. Military Acad.* (3d ed., 1891); E. Upton, *Military Policy of the U. S.* (1907), 90, 238–241; J. R. Soley, *Foreign Systems of Naval Education* (1880); U. S. War Department, *Military Laws* (1908), ch. xxxi, 1237, 1240; *Military Schools in Europe* (1896); *Annual Reports, 1899–1912*; (1904), 62–65, 159–165, 277–282, 335–338, 414–418; (1908), IV (1010), 1, 27, 164, 185–187, 460–462, 610, 639, 701; *Army Register* (1911), 109–116; *Register of the U. S. Military Acad.* (1911), 4–6, 52, 53, 60–66; U. S. Navy Department, *Annual Reports* (1912), 57–60, 132–138, 458–462, 584; *Navy Register* (1913), 259–261; *Register of the U. S. Naval Acad.* (1911), 6–10, 151–159, 169–178.

C. G. Calkins.

EDUCATION OF THE BLIND. Instruction for the blind was not provided in the United States until about fifteen years later than instruction for the deaf. In 1832 schools were opened in New York and Boston. The Boston school had been incorporated three years earlier and Dr. Samuel G. Howe was sent abroad to study methods. In 1833 a school was opened in Philadelphia. These pioneer institutions have always been under private management, but the states soon began to establish public instruction for the blind, Ohio being the first in 1837. Other states rapidly followed the example and at present (1913) there are 41 state boarding schools for the blind, all supported partially or wholly by taxation.

Similar instruction is given in all—a combination of the usual academic studies with manual arts and trades. To enable the pupils of these schools to become partially or wholly self-supporting, each one is given an opportunity to become skilled in such trades as broom making, chair caning, carpet weaving, etc., or music.

In the use of most of the musical instruments and in such trades as need a delicate

touch the blind becomes wonderfully skilled. The hand training begins in the kindergartens, and delicacy of touch is specially developed by reading the literature provided in raised characters to be touched by the finger tips.

There are three systems of printing for the blind. The first was invented by Dr. Howe and consists of embossed letters similar to ordinary book print in form, but larger. The two point systems consist of arrangements of embossed dots, not in the shape of letters but resembling domino dots which are much more easily recognized by the touch of the fingers. The "New York point" was invented by Wait of the New York Institution for Blind; and "The Braille" was invented by Louis Braille in France in 1825, and is at present generally used in the United States and is the only system used in Europe for printing both literature and music.

Both the academic and the industrial education of the blind is essentially the same as for those who see, except for the methods of imparting knowledge. Until within a very few years instruction was provided by the state for the young blind only, but it has recently been recognized that blind adults cannot work under the same industrial conditions as those who see, and there are now 17 or 18 industrial establishments especially for them (*see* table under DEAF AND DUMB, PUBLIC CARE OF). More than one half of these have been provided within ten years.

See DEAF AND DUMB, PUBLIC CARE OF; DEFECTIVE CLASSES, PUBLIC CARE OF; EDUCATION AS A FUNCTION OF GOVERNMENT.

References: Paul Monroe, *Cyclopedia of Education,* (1911); U. S. Commissioner of Education, *Report* 1909; R. G. Boone, *Education in the U. S.* (1889); A. R. F. Wylie, "On the Blind" in *Pedagogical Seminary,* IX, 32; E. G. Dexter, *Hist. of Education* (1906), IX, 12.

GEORGE E. FELLOWS.

EDUCATION OF WOMEN. From the private "dame schools" of colonial days to which girls were admitted to get at least two of the three R's, to the great women's colleges of to-day stretches the story of progress of women's education in America. What was given grudgingly in the eighteenth century, as an incident in the education of boys, was expanded and granted to girls in academies and in coeducational schools, in New England and Pennsylvania especially, in ever more generous measure as the nineteenth century developed, until girls have now (1913) practically the same opportunities as boys in all public schools.

In the development of manual training (*see*) provision was made for the peculiar needs and interests of the girls in courses in sewing, cooking, etc., and when courses and schools for commercial subjects were opened girls eagerly entered. Intermediate between the elementary and secondary schools and the higher educational institutions are the normal schools, public and private, which are almost a peculiar possession of the women. In the 288 normal schools reporting to the United States Bureau of Education in 1911 were 66,115 women and 18,080 men, such schools representing property worth in the aggregate about $64,000,000.

Higher education for women is of comparatively recent date. Recognition of their need for and right to such education, and provision for supplying the need, fall within the last half of the nineteenth century. The first college for women was Vassar College (1865), an institution typical of the separate high-grade colleges for women only. By the end of the century not less than fifteen similar institutions were giving instruction, including Smith, Wellesley, Mount Holyoke, and Bryn Mawr. Eight institutions for women are affiliated with colleges or universities for men, giving "coördinate education" (*see*), especially Radcliffe (Harvard), Barnard (Columbia), and Newcomb Memorial (Tulane). In a third group are comprised about 340 coeducational institutions (*see* COEDUCATION), including all the state universities save those of Virginia, and Georgia, and practically North Carolina and South Carolina. The registration of the colleges for women only was, in 1875, 9,572; in 1910, 20,564. The corresponding figures for coeducational institutions were in 1875, in round numbers 3,000, and in 1910 (including professional students), 45,000. The property and income of colleges for women in the year 1910 were respectively $46,000,000 and $7,000,000.

In general, the women's colleges have followed closely the model of the men's colleges. To meet some of the newer social and economic needs, new courses and the redirection of old courses have been introduced, as in the University of Illinois, and Teachers College (Columbia); and new institutions like Simmons College, Boston (1902) have risen. Save for two medical schools (New York and Philadelphia), there are no special professional schools for women. In 1911 the regular professional schools reported registration of women as follows: medicine, 810; law, 223; theology, 467; dentistry, 77; and pharmacy, 264.

See EDUCATION; COEDUCATION; STATE UNIVERSITIES; WOMEN, LEGAL RIGHTS OF; and under SCHOOL.

References: E. G. Dexter, *Hist. of Education in the U. S.,* (1904) ch. xxi; N. M. Butler, Ed., *Education in the U. S.* (1910), 319–358; U. S. Com. of Educ., *Annual Report,* 1909, 1910, II, ch. xxi, xxiii, xxiv; Marion Talbot, *Education of Women* (1910); H. R. Olin, *Women of a State University* (1909); *Am. Year Book, 1910,* 801, and year by year.

KENDRIC C. BABCOCK.

EDUCATION, RECENT TENDENCIES IN. Education at public expense, with the exception of a very few cases, was the world over limited to the elementary school until well into the 19th century. It was nearly a hundred years later before even elementary education in the United States could be said to be universal, free, compulsory, and supported and controlled by the state. Boston was the first of the larger cities to establish a public high school, in 1821; and in 1912 there were over 6,000 public high schools. The period of the most rapid increase in number was between 1900 and 1910. The principle of public secondary education was firmly established by 1870. From 1900 onward the growth of secondary education has been marvelous in all parts of the country, and, in the western half of the United States, most of the leading colleges and universities are state institutions and practically free. In the United States in 1910, existed 41 state universities, and 35 colleges partially or wholly supported by public funds (state or federal). These facts clearly show the tendency of government to assume the duty and the burden of all grades of instruction. So great is the popular faith in these public institutions that some of their most glaring defects have resulted from hesitation to diminish local control and popular management; yet there is a tendency toward overcoming evils so caused by increasing the power of the state, through expert supervision and centralized authority.

Vocational Education.—It is generally agreed that the most striking tendency at present is toward "vocational education." The practice goes back certainly as far as 1862 when the United States Government made a land grant for state colleges for agriculture and engineering (*see* MORRILL LAND GRANT). Public policy is certainly not opposed to governmental support of vocational training, for all normal schools are vocational, and also law and medical schools are accepted as parts of state universities. Commercial high schools are constantly increasing in number. All public education specifically for defectives is essentially vocational. The development of industry has destroyed the old apprentice system; cultural education which has held sway for three centuries is now seen to be but a single phase of the subject, and educators and labor unions, business men and philanthropists join in advocating vocational instruction. No general scheme is as yet worked out, but all recognize that it is no longer sufficient to train leaders; the expanded idea is to train also the privates. Milwaukee supports a trade school, Chicago has a two year vocational high school, Boston a practical arts high school for girls, and other cities are making beginnings in this line.

Physical Education.—Some foremost educational leaders now place physical education as first in importance, in the list of aims of education, physical, vocational, social, cultural. The historical development of education has been about in the reverse order. Schools first took up what the home could least well furnish, hence traditionally school education became cultural. Physical education was first, and still is, largely, a function of the home just as nourishment for children is a function of the home. Nowadays, if the school receives children insufficiently nourished, the duty of supplementing the home in this respect is in some places publicly recognized. Physical education is increasingly prominent because modern urban conditions require increasing attention to play, food, prevention and cure of disease so as to insure physical efficiency; also because industrial conditions make the home and shop less effective in physical development than formerly. For these and other reasons it seems probable that the public schools may come to make complete provision for all matters of nurture, regulation of work. exercise and play, correction of defects, and instruction in hygiene. So much attention to physical training in the lines of college sport has developed that it has been seriously proposed in some quarters to allow credit toward a degree for time thus spent.

Elective Work.—The last quarter century has seen the principle of election spread downward from the universities, through the secondary schools to the upper grades of the grammar schools. In the colleges and universities some institutions have permitted unrestricted election, but elective systems usually restrict choices of studies within certain limits. In secondary schools the purpose of election has been to permit better adjustment of work to the capacities and needs of individual pupils, and selection of subjects has been generally assumed to be made with the advice of the teacher in consultation with parents. The most general practice throughout the country is to prescribe a foreign language, algebra and geometry, English, a science, and a year of history. This leaves over one third of the course for options, besides the opportunity of choosing one among several languages and one of several sciences. As the tendency toward vocational interest has grown, the election of studies fundamental to certain vocations has become more pronounced.

Education of Women.—Next to the strong tendency toward vocational education in general is the newer trend of educational thought toward the study of the special needs of females of all ages. In the common school, the high school, and the college especially where coeducation grew up with little recognition of sex, the curriculum was essentially the same whether for males alone, for males and females together, or for females alone. For example, the curriculum of such a college as Williams or Amherst for men did not

differ essentially from that at Oberlin for both sexes, or Smith for women only. The same has been true in common and secondary schools, but close study is now being made, with a view to provide for the general and vocational needs of girls and women. Few notable results have been attained. One of the few conspicuous attempts in this direction is Simmons College in Boston, on a private foundation. Florida has a separate state college for women in addition to a state university. Undoubtedly this tendency will develop.

Educational Science.—A tendency of the greatest importance is that of evolving a scientific educational method, through a careful study of children themselves rather than of the subjects taught to them. The school room should be in part a laboratory for study and experiment. Child study is the foundation for pedagogy. The universities of the country, great and small, expect to maintain a department of education or pedagogy almost as invariably as of mathematics. It is understood that processes of education may be studied as well as chemistry or biology. Educational science is not as far advanced as other recognized sciences but it has made remarkable strides.

Summer Schools.—Following the example of some of the larger universities, many of the state universities and normal schools maintain summer sessions, a system begun at Harvard University about 1875. Teachers freely avail themselves of the opportunity for study at these summer terms, instead of attending brief institutes or associations. They matriculate for serious study in regular courses, and in many cases return to these summer sessions through a series of years. This and other methods of improving teachers when out of the school room tends strongly toward elevating the profession. The interest of the people in the schools is helped by a rapidly growing practice of using school buildings for neighborhood purposes.

See under EDUCATION; SCHOOL.

References: N. Y. Commissioner of Educ. "Our Children, Our Schools and Our Industries" in *Annual Report*, 1908; "Medical Inspection of Schools Abroad" in U. S. Com. of Educ., *Annual Report*, 1902, 509; "Public School and Public Library" in *ibid*, 1897, 673; O. T. Bright, "School Gardens" in Nat. Educ. Assoc. *Proceedings*, 1903, 7.

GEORGE E. FELLOWS.

EDUCATION, STATE SUPERINTENDENTS OF. The chief supervisory or administrative officer of the state educational system is called, in 30 states, the superintendent of public instruction; in 5 states, the superintendent of education, or of public education. Other designations are: commissioner of education (New York, Massachusetts, New Jersey), or of common schools (Ohio); superintendent of schools, of free schools, or of public schools. In most of the states this officer is elected by the people for terms varying from 1 to 5 years, the usual term being 4 years. In a few states he is appointed by the governor, or by the state board of education. The salary, usually about $3,000, ranges up to $6,500 (Massachusetts), $7,500 (Illinois) and $10,000 (New York and New Jersey). Only six states prescribe special qualifications.

By virtue of his office the superintendent of public instruction is commonly a member of the state board of education, and sometimes of several other boards having the general management of the state's higher educational institutions. He is ordinarily charged with the supervision of the public schools of the state, apportions the state school funds on the basis prescribed by law, determines judicially many matters of school law and administration subject to review by the courts, and makes a report to the governor annually or biannually. In many of the states the examination and certification of teachers, especially of those applying for the higher grades of credentials, devolve upon the superintendent of public instruction; in other states he shares this duty with a state board of education or of examiners, or, so far as the lower grade, short-term certificates are concerned, with county or city officers.

The enlargement of the state's activities in education during the last decade has given the office of superintendent of public instruction increased permanence, dignity, prestige, and influence, and a correspondingly higher type of man has been called to fill the office.

See EDUCATION AS A FUNCTION OF GOVERNMENT; EDUCATIONAL ADMINISTRATION; TEACHERS, LEGAL QUALIFICATIONS OF; and under SCHOOL.

References: U. S. Bureau of Educ., "Educational Directory" in *Annual Report, Teachers' Certificates Bulletin*, 1911, No. 18; Supt. of Pub. Inst. of Ill., *28th Annual Report*, 1910, 266–278.

KENDRIC C. BABCOCK.

EDUCATION, TECHNICAL. Public technical education should be distinguished from manual training (*see*) and from education in the mechanic arts and commerce schools (*see*), though all three forms of education represent the same educational impulses and social ideals. They are evidence of the full recognition of the principle that education is not merely a good thing to be encouraged by the government, perhaps provided for a few, but a vital thing which the government must provide in equitable fashion for the variant needs and capacities and tastes of every child, to the limit of his ability to take it and use it for the common good. Technical education, in contrast with education in general science or specialized science, is concerned with the direct application of science, mathematics, and

mechanics to the affairs of industry, construction, production, business, and commerce. Through it, for example, geology, chemistry, and physics are fused to help make a mining engineer.

The laboratory, shop, machinery, field, and camp are the distinguishing characteristics of technical education whether of the elementary and strictly vocational type or of the highest technological type. The enormous sums applied to instruction in technical subjects, by private institutions and by public, may be illustrated by two examples. For equipment of machinery, etc., for mechanical engineering alone, Cornell University reports a value of more than $200,000; for scientific apparatus, machinery, and furniture, Iowa State College (of agriculture and mechanic arts) reports more than $550,000, not all of which, of course, is used for purely technical education.

Development.—The whole development of technical education, both in Europe and in the United States, falls practically within the last sixty years, but only in the last half of this period have the newer schools and courses taken rank alongside the older colleges and professional schools. Save for the United States Military Academy at West Point (1802) and the Naval Academy at Annapolis (1854) technical education got no public support before the opening of the Michigan Agricultural College in 1857. The first private technical institution was Rensselaer Polytechnic Institute at Troy, N. Y., founded in 1824. The state universities (*see* UNIVERSITIES, STATE) were at first essentially colleges of liberal arts, and remained such until the last third of the nineteenth century during which they organized and developed the great technological divisions now so prominent in great state universities like those of Michigan, Wisconsin, and California.

The chief forms or branches of public technical education are agriculture, architecture, business, forestry, household economy (domestic science), and the various kinds of engineering—civil, chemical, electrical, irrigation and drainage, marine, mechanical, metallurgical, mining, naval, railroad, sanitary, and textile. Agriculture was the first form of technical education to receive state support; to the Michigan Agricultural College (1857) were early added those of Maryland and Pennsylvania in 1859. The great impetus to a movement "for the benefit of agriculture and the mechanic arts" came with the passage of the epoch-making act of Congress of July 2, 1862, known as the Morrill Act (*see* MORRILL LAND GRANT). No other single influence has so powerfully affected public technical education of the middle and higher grades, as has the Morrill Act. It gave to each state 30,000 acres of public land for each Representative and Senator in Congress, for the "endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts . . . in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." The total value of this land-grant to the states so far as it remains in their hands is now (1913) about $13,000,000, and produces from invested proceeds and leases an annual revenue passing $748,000. By the two later acts of Congress, 1890 and 1907, each state receives from the Federal Treasury a subsidy of $50,000 per year "for the more complete endowment and support" of institutions carried on according to the act of 1862—a total annual federal grant of $2,500,000. Since the act of 1890 required the states which accepted the grant to provide instruction of like character for colored and for white students, 17 states have established or affiliated separate schools for the technical education of the colored students.

Method.—In 20 states and in Porto Rico the universities and land-grant colleges are united, such institutions including all but five of the greater state universities; 26 states and Hawaii have created agricultural and mechanical colleges separate from the universities; 2 have added such colleges to private institutions (Cornell University and Rutgers College). Massachusetts divides the funds between two institutions.

Great variation appears in the grade of work done in these institutions. The courage and facility of the American in making experiments in education have nowhere been better illustrated. Late and significant developments of technical education are in the direction of short courses at the institutions and of extension courses outside the institutions' walls. Except in some of the southern states the public technical schools are as a rule open to men and women on equal terms. Special courses are designed for women's instruction in art, music, business, and household economy; in Mississippi and Florida separate state colleges for women are established. In 6 states there are separate schools of mining engineering—Michigan, South Dakota, Colorado, Missouri, Montana, and New Mexico. Massachusetts coöperates with three cities in the maintenance of textile schools, and supports a Nautical Training School.

While public secondary technical education and specifically vocational schools are usually supported by the locality, occasionally supplemented by private generosity, the support of the more highly differentiated forms of such education comes from state and federal sources. One city (Cincinnati) supports a municipal university. The total of institutions in the United States at present receiving public support for technical educa-

tion, excluding institutions for the delinquent and those distinctly secondary, is about 115, of which all but 10 are under public control.

See EDUCATION, INDUSTRIAL; and under SCHOOL.

References: E. G. Dexter, *Hist. of Educ. in the U. S.* (1904), ch. xvii, xx; N. M. Butler, Ed., *Education in the U. S.* (1900), chs. xi-xiv; Soc. for the Promotion of Engineering Educ., *Proceedings* (1893–1911).

KENDRIC C. BABCOCK.

EDUCATIONAL ADMINISTRATION

General Characteristics.—Though there is no uniformity in the educational systems of the different states and no national system, yet the idea of universal free education at public expense is omnipresent; however the agencies for realization of the idea may vary with the localities, there is enough similarity in aims and results to warrant the use of the term "American System of Public Education." The administration of public education may be said, in general, to be in the hands of state superintendents, city superintendents, county, town or district superintendents (*see* EDUCATION, STATE SUPERINTENDENTS OF; SCHOOLS, SUPERINTENDENTS OF.

Efficiency is the test to be applied to every public organization. While the machinery for administering public education is still far from perfect, and is different in many respects from the ideals of prominent educators, nevertheless the last three or four decades have witnessed marvelous advances in administrative efficiency. The United States lacks what some European nations have—a national ministry of education. The Federal Government assumes the direct administration of no schools but those for the Indians and for military education and has never assumed the control of public education in the states. The Bureau of Education in the Department of the Interior, through annual *Reports* and *Bulletins* makes remarkable contributions to educational literature, and its compilation of statistics has grown to be invaluable; but neither the bureau nor the commissioner in charge of it has supervisory or administrative authority over public education in the states.

State Administration.—Every state has a state superintendent of public instruction (not in every case called by this exact title). The state superintendent is in all cases understood to exercise general supervision over the schools of the state, but practically he can do very little directly. He can, however, by visits to the counties and by conferences with county and local officials and by public addresses, wield a great influence in one or more administrative fields. Many states have by law imposed upon the state superintendent certain administrative duties, such as the holding of institutes, removing of derelict county superintendents, preparing questions for teachers' examinations, distributing state moneys, etc.

City Administration.—Efficient supervision is close supervision, and in the nature of the case this can be had only in towns, cities and counties by the direct contact of the respective superintendents with the schools within their jurisdiction. In all the states there is tendency for the large cities to control their own educational administration independent of the state, through special or permissive legislation. In a few instances the school authorities have power of taxation for school purposes. The conditions and practice are too various in the different cities for even an outline, but the greatest progress educationally has been made in those cities which have reduced the board of education to a small number (Boston from 116 in 1875, to 5 in 1912; Rochester from 16 to 5, Baltimore, 29 to 9, etc.), and have centralized the management as in Indianapolis, Toledo, Los Angeles and elsewhere. Cities where such changes have occurred are distinguished for business-like and non-political administration of schools. In fact the application of the same principles to the conduct of education as the manufacturer or banker applies to his business has resulted in improved school systems.

The board should confine its activities chiefly to legislation, leaving the executive authority to the superintendent. Formerly, in many cities, and at present in a few, large boards were subdivided into many committees, each of which exercised some executive function; but recent experience has shown that the executive work should be centralized and in the hands of an expert who gives his whole time and attention to it. If he be found derelict or incompetent he may easily be removed, but while in office he should be free to plan and carry out educational policies and the board should provide the means.

County Administration.—In the New England states the county is not an administrative unit, but in all the other states there is a growing tendency for the county administration to become centralized and important. The examination and certification of teachers for the rural schools, preparation of courses of study, and selection of text books are among the functions devolving upon county superintendents. While it is possible for a layman to be elected to the office the practice is growing of requiring candidates to be qualified and experienced educators. This is more necessary

because district boards are often uneducated and have narrow views of education and it becomes the duty of the superintendent to enlighten them on school problems and practices elsewhere, and to harmonize discordant elements. The importance of the county in educational administration reaches its maximum in the southern states, and its minimum in New England where there are no county school officers.

Smaller Administrative Units.—In New England the town is the administrative unit educationally and otherwise (*see* MAINE). In the central and western states the town and district systems are combined with and related to the county system. Obviously the state and county superintendents who are charged with the general oversight of schools in such large areas cannot actually supervise the instruction in the local schools; therefore outside of cities and incorporated towns close expert supervision of instruction is as yet uncommon. It has developed somewhat for rural schools in New England through district superintendencies, where several small towns unite to employ a competent superintendent.

Certification of Teachers.—There is a great variety of practice in certification, the tendency, however, being away from that certification by local and lay authorities which until recently was a universal practice and obviously open to abuses. With the better provision for the training of teachers the need for frequent examination and the issuance of short term certificates has become less. Leading educators are united in favor of: (1) certification by experts only; (2) recognition of professional preparation without examination; (3) certification for special lines of work; (4) recognition in one community of certificates issued in another.

These principles are making headway in many states. Formerly it was the custom to compel all candidates for teaching positions to submit to an examination by local authorities whether the candidate was inexperienced and with a meager training or possessed of high scholastic attainments and years of successful experience. Now (1913) at least 18 states recognize certificates of other states and diaplomas of normal schools and accredited colleges. This practice puts a premium on professional preparation, successful experience and qualifications for special kinds of work. With the state superintendents, generally, lies the authority to issue long term or life certificates.

Appointment of Teachers.—The schools suffer if teachers are appointed on any other grounds than strict merit and special qualifications for the position, yet too often in the past have politics or personal influence played important parts in the selection of teachers. Although certification by laymen is decreasing, school boards still retain as their most important function the selection and appointment of teachers. In a very few large cities the power has been delegated to the superintendent, and in a few, competitive examination is relied upon, the highest on the list receiving appointment.

Expenditure.—The estimate of the United States Commissioner of Education of the amount of money expended on public education in 1905, not including colleges and normal schools, exceeds one-fifth of the total public expenditure of the states and the United States for that year. This vast sum was in great part raised by local taxation, although in some of the southern and western states the income from lands and invested funds is considerable. The assessment, collection and disbursement of taxes for school purposes is generally in the hands of others than the administrators of the schools themselves. The practice varies greatly in states and cities but generally in towns and smaller cities and districts, popular vote fixes the amounts to be raised for schools. In New England the town meeting determines the amount. In some cities the board of education has the independent power to assess for school purposes. State and county funds are distributed in various ways, but the one most common is according to school census. The apportionment of moneys within the town, district, or city, for salaries, up-keep of school property, and for supplies and books is ordinarily in the hands of the local board or committee. Although up to the present time the great importance of local taxation is to be noted, there is a growing demand for the United States Government to make larger appropriations for special education within the states, as it does at present for the land-grant colleges.

See PENSIONS FOR TEACHERS; STATE EXAMINERS; TEACHERS, LEGAL QUALIFICATIONS FOR; TEXT BOOK LAWS; TRUSTEES AND REGENTS; and under EDUCATIONAL; SCHOOL.

References: S. T. Dutton and D. S. Snedden, *Administration of Public Education in the U. S.* (1908); E. P. Cubberly, *School Funds and their Apportionment* (1905); "Selection of School Boards" in Nat. Educ. Assoc., *Proceedings*, 1897, 988; E. G. Cooley, "Basis of Grading Teachers' Salaries" in *ibid* (1900), 276.

GEORGE E. FELLOWS.

EDUCATIONAL LAND GRANTS. Origin.—The granting of public lands for the support of education has been a striking feature of the American land system from the earliest colonial period. The policy finds its origin in English practice; it was carried over to America, and although first proposed in the southern colonies, was most highly developed in New England. In Massachusetts, Connecticut, and New Hampshire, lands were early granted by the towns and by the colonies for the support of schools and colleges. By the middle of the

eighteenth century the New England practice was to set aside one "share" in each township for the support of schools.

Preconstitutional.—This system was incorporated in the federal land ordinance of 1785 which reserved the sixteenth section in each township for this purpose although the other New England feature, a land grant for religious uses, was defeated. In 1787 the national policy was reinforced by three measures: the famous Ordinance of 1787 which proclaimed that "religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged"; the instructions of Congress to the Board of Treasury that in every sale of a large tract to a company, section sixteen for education, section twenty-nine for religion, and two townships for a university, should be granted; and third, the incorporation in the Constitution of the clause giving Congress unlimited power over the public domain (Art. IV, Sec. iii, ¶ 2).

School Lands.—For a time, however, it seemed as if the school grants had been abandoned by the new Congress. No provision was made for them in the first acts under the Constitution in 1796 and 1800. In 1802 they were reincorporated in the national land system in a way which assured their permanancy. When Ohio, the first of the public-land states, sought admission to the Union, a question was raised as to her right to tax public lands which were in process of sale under the credit system. To avoid all controversy it was proposed to grant Ohio a quantity of lands sufficient to cover the loss of revenue, she, in turn, agreeing not to tax any lands until five years after the date of sale. The school lands, every section sixteen, made up the bulk of the grant. From this time, for sixty years, the school and university grants generally formed the object of a compact, the terms of which varied, between the Federal and the state governments on the admission of the latter. After 1864, the conditions and the land grants were no longer linked in a compact. During the territorial period the lands were reserved and were subject to lease. On admission the lands were vested in the states, subject at times to various conditions as to sale or lease. Twelve states received section sixteen for schools. The Oregon Act of 1848 reserved sections sixteen and thirty-six in each township, and these were granted to the state on admission in 1859. Fourteen additional states received this amount. For Utah, 1894, the grant was doubled; and New Mexico and Arizona, 1910, also received sections two, sixteen, thirty-two, and thirty-six.

Higher Education.—Federal land grants for higher education originated in the contract with the Ohio Company, 1787, which called for a grant of two townships for a university within their purchase. Symmes (*see*), who purchased in 1788, received a township in 1792. In 1803 a township was granted to Jefferson College, Mississippi, and after 1804 it became the practice to reserve, generally, two townships in each territory, which were granted to the state on its admission, as a part of the compact. Such a grant did not form part of the Ohio compact because of the previous grants to the Ohio Company and Symmes. Recently larger grants have been made. For this purpose Oklahoma, in 1906, received 250,000 acres instead of two townships, as well as one-third of the proceeds of section thirteen. New Mexico received 310,000 acres, and Arizona 246,080 acres. Utah, Idaho, and the Dakotas also received enlarged grants.

Miscellaneous.—With the admission of Montana, North Dakota, and Washington, in 1889, the practice of including grants for miscellaneous educational institutions originated. These and the later states have received grants for schools of mines, normal schools, scientific schools, reform schools, deaf and dumb asylums, military institutes, and general educational purposes. In the case of Oklahoma these grants amounted to 800,000 acres.

In but one instance have the federal land grants been extended to all the states, old and new. The Morrill Act of July 2, 1862, for the endowment of agricultural and mechanical colleges, granted to each state 30,000 acres for each Senator and Representative in Congress. Scrip was issued to the states which contained no public lands, and this could be located by the assignees in the public-land states. New states received the benefit of this act until 1894; but for Utah, the Dakotas, Oklahoma, New Mexico and Arizona, a much larger grant was made. Aside from these regular grants a few special grants of small amount have been made, such as a township apiece for the Connecticut and the Kentucky deaf and dumb institutions, and a number of smaller donations. By state action some of the proceeds of the lands granted as salines, swamp-lands, and for internal improvements have passed into the school funds.

States.—Mention should be made of the grants by states which were not formed from the public domain. Those of the original states which possessed lands made grants for schools and higher education, notably in New England. Vermont, Maine, Kentucky, and Tennessee made grants of varying importance. Texas, with an enormous extent of waste land, has granted 2,289,682 acres to the university, and about 29,000,000 acres to common schools.

Administration.—It would be difficult to make a general statement regarding the management of these land grants. It is undoubtedly true that in many cases the states did not make the best use of the national bounty. This is especially true of the old states. Of late years the school lands have been better conserved, a high minimum price has been fixed, and in some cases a system of lease has

been inaugurated. But in too many cases the lands were sold for ridiculously low prices and the permanent funds were diverted or badly invested.

Statistics.—The acreage of the land grants for the endowment of different classes of educational institutions may be summarized as follows:

Common schools		77,359,443
Universities		2,397,000
Agricultural colleges:		
Scrip	7,830,000	
In place	3,320,000	
		11,150,000
Various educational purposes		4,860,480
Special grants		51,651
Total		95,818,574

See Education, Agricultural; Education as a Function of Government; Land Grants; Public Lands; State Universities.

References: Thomas Donaldson, *Public Domain* (1884), Joseph Schafer, *Origin of the System of Land Grants for Education* (1902); G. W. Knight, "Hist. and Management of Land Grants for Educ. in the Northwest Territory" in Am. Hist. Assoc., *Papers*, I (1885); F. W. Blackmar, *Federal and State Aid to Higher Educ.* (1890); histories of education in various states; Bureau of Education, *Circular* (1890 to date); Commission of the General Land Office, *Report*, 1907.

Payson J. Treat.

EDUCATIONAL STATISTICS

Basis of Information.—The collection of statistics of education is one of the most important functions of the Bureau of Education. Valuable as has been this work in the past, there is promise of still greater value in the future; for recently there have been added to the bureau specialists in higher education and school administration. It will be possible, hereafter, to cover more adequately the general educational work of the country, and the commissioner will be greatly aided by the coöperation of various educational bodies and organizations, and the superintendents of states, counties, and cities.

In drawing conclusions from statistics it must be remembered that the same figures may have different meanings, as for instance enrollment in Alabama or Kentucky would not indicate the same amount of schooling as the same enrollment in Massachusetts. The mere collection of figures is much easier than judicious analysis and comparison. Statistics are valuable only in proportion to their reliability. To collect from the proper officers reports on numbers of pupils, teachers, days of school years, etc., is comparatively easy; but other facts, chiefly financial, are difficult to obtain by the bureau, largely because of the different methods of accounting in the various states. In 1910 the Bureau of Education and the Census Office came to agreement on a form of report which both will use.

The need for uniform fiscal statistics is everywhere acknowledged. In many of our cities one third of the entire city revenue is devoted to education. In some communities the amount of money which is raised cannot be greatly increased. Demands from all departments of the city government for increased funds are insistent. Increased expenditure for education must be justified by showing the maximum return for money already granted, and such showing requires a system of accounts and of reports at least as elaborate as that comprised in the schedule of fiscal statistics recommended by the Bureau and other bodies coöperating in the work.

In tables V and VI below, the increase in the cost of the public school system is very great, greater than the increase in any other line of public expenditure. The difference between the various divisions of the United States in regard to these matters is also large. The average cost in the United States to instruct each child is 20 cents per day, 12 cents of this being for teaching. The difference between the several states in this regard, and the difference in some states and the United States average is striking. Nevada is distinguished for having spent (figures for 1907–8) relatively more than any other state for her schools, an average of 46½ cents per day for each pupil. In marked contrast to this are the expenditures in several southern states.

Following is a summary of statistics of public education in the United States for schools controlled and supported by localities, municipalities, states or the Federal Government. The statistics are for the year 1910–11.

TABLE I. ENROLLMENT AND ATTENDANCE [1]

	Total Number of Children 5 to 18 Years Old	Percentage of Enrollment	Percentage of Enrollment in Daily Attendance	Average Number of Days Attendance by Each Pupil Enrolled
United States	24,745,562	72.54	71.4	81.1
North Atlantic Division	6,210,883	67.91	79.2	96.7
South Atlantic Division	3,764,474	69.32	65.1	59.0
South Central Division	5,454,149	71.35	61.9	56.4
North Central Division	7,732,391	77.42	73.9	93.9
Western Division	1,583,665	78.58	75.2	94.1

[1] The enrollment according to sex in the United States is as follows: Boys, 8,852,183; girls, 8,653,992; total, 17,506,175; about the same ratio of the sexes is found in the various divisions.

TABLE II. REGIONAL VARIATION IN PROPORTION

	1870—71	1910—11
United States	61.45	72.54
North Atlantic Division	77.95	67.91
South Atlantic Division	30.51	69.32
South Central Division	34.17	71.35
North Central Division	76.87	77.42
Western Division	54.77	78.58

TABLE III. LENGTH OF SCHOOL TERM IN DAYS

	1870—71	1909—10	1910—11
United States	132.1	157.5	156.8
North Atlantic Division	152.0	180.2	179.8
South Atlantic Division	97.4	132.0	130.6
South Central Division	91.6	125.7	127.8
North Central Division	133.9	165.4	164.3
Western Division	119.2	163.2	159.3

TABLE IV. TEACHERS AND SALARIES

	Men	Men's Average Salary	Women	Women's Average Salary	Percentage of Male Teachers	
					1870—1871	1910—1911
United States	110,328	$73.86	423,278	$54.98	41.0	20.7
North Atlantic Division	17,831	79.75	113,247	49.97	26.2	13.6
South Atlantic Division	15,775	60.72	47,893	42.63	63.8	24.6
South Central Division	29,933	63.26	59,093	52.60	67.5	33.6
North Central Division	39,343	73.64	168,695	55.46	43.2	18.9
Western Division	7,446	102.69	34,350	71.55	45.0	17.8

TABLE V. PROGRESS OF SCHOOL EXPENDITURE

	Total Expenditure		Per Capita of Population	
	1870—1871	1910—1911	1870—1871	1910—1911
United States	$69,107,612	$446,726,929	$1.75	$4.76
North Atlantic Division	29,796,835	149,247,686	2.38	5.64
South Atlantic Division	3,781,581	28,666,569	.63	2.31
South Central Division	4,854,834	43,899,504	.73	2.50
North Central Division	28,430,033	169,070,869	2.14	5.58
Western Division	2,244,329	55,842,301	2.15	7.80

TABLE VI. PROGRESS OF EXPENDITURE PER PUPIL

	1870—71	1910—11
United States	$15.20	$34.71
North Atlantic Division	18.31	44.27
South Atlantic Division	10.27	16.85
South Central Division	9.06	18.24
North Central Division	14.87	38.02
Western Division	21.87	59.02

TABLE VII. CITY SCHOOL SYSTEMS, 1911—1912

	Places 5,000 to 10,000	Cities over 10,000
Total expenditure	$23,440,517	$220,489,079
Number of places	635	610
Enrollment	847,308	5,296,558
Average daily attendance	676,754	4,158,052
Supervising officers	675	2,040
Number of teachers	22,240	132,575

TABLE VIII. PERCENTAGE ANALYSIS OF SCHOOL REVENUE

	Per Cent of Whole Revenue Derived from			
	Permanent Funds and Rents	State Tax	Local Tax	Other Sources
United States	3.3	15.3	74.0	7.4
North Atlantic Division	.8	11.7	77.5	10.0
South Atlantic Division	1.0	27.0	61.9	10.1
South Central Division	9.3	30.0	53.2	7.5
North Central Division	4.6	11.0	79.7	4.7
Western Division	3.4	20.3	70.5	5.8

TABLE IX. CLASSIFICATION OF EXPENDITURE

	Sites, Buildings, Furniture, Libraries and Apparatus	Teachers' and Superintendents' Salaries	All other Purposes, Principally Maintenance	Total Expenditures Excluding Payments of Bonds
United States	$75,555,615	$272,944,669	$98,226,645	$446,726,929
North Atlantic Division	25,822,769	88,853,059	34,571,858	149,247,686
South Atlantic Division	4,676,045	20,083,662	3,906,862	28,666,569
South Central Division	5,380,502	31,050,521	7,468,481	43,899,504
North Central Division	28,182,320	103,123,129	37,765,420	169,070,869
Western Division	11,493,979	29,834,298	14,514,024	55,842,301

Institutions of college or university grade supported by the various states, number 81, of which 68 receive also federal appropriations.

Agriculture and Mechanic Arts; State Support.—The following states, 17 in number, support each state university, which, besides the usual academic department, has a department or college of agriculture and mechanic arts receiving from the United States the benefit of the Morrill fund: Arizona, Arkansas, Florida, Idaho, Kentucky, Louisiana, Maine, Missouri, Minnesota, Nebraska, Nevada, Ohio, Tennessee, Vermont, West Virginia, Wisconsin, Wyoming. Ohio has, in addition, two institutions called Miami University, and Ohio University, which receive regular state support. Florida supports a separate college for women.

State and Federal Support.—Nine states having each a college of agriculture and mechanic arts are as follows: Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island. In Massachusetts, besides the Agricultural College, the Institute of Technology receives a portion of the Morrill fund and also several state appropriations. In New York the State College of Agriculture is connected with Cornell University, and in New Jersey with Rutgers College.

Separate Colleges.—Twenty states have a state university and a separate college of agriculture and mechanic arts: Alabama, Colorado, Georgia, Indiana, Iowa, Kansas, Michigan, Mississippi, Montana, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Virginia, Washington. In addition, a school or colleges of mines is supported by five states, Colorado, Michigan, Montana, New Mexico, South Dakota. Georgia has an additional school of technology, and South Carolina and Virginia military institutes. Virginia also supports the College of William and Mary.

In these state institutions there were, in 1910, 7,997 professors and instructors and 84,499 students.

Four cities, New York, Cincinnati, Philadelphia and Charleston, S. C., support institutions of college or university grade.

Land Grant Colleges.—The statistics of the so-called land grant colleges, established under the provisions of the act of Congess of July 2, 1862, show in recent years the wonderful increase of public interest in agriculture and mechanic arts. There are now 68 of these institutions, 16 of which are separate institutions for the colored race. Public interest is indicated by the increase in the number of instructors and students and the value of property and income. They have been, since 1909, active in developing short courses and extension work. The legislatures of 15 states in the session of 1912 made special appropriations for extension work, and in 30 states the land grant colleges have men devoting the larger part of their time to giving practical instruction to the people at a distance from the seat of the institution.

The number of students enrolled by these institutions in agriculture, domestic science, mechanic arts, short and special courses, and in all departments for the past seven years is shown in the following table:

TABLE X. NUMBER OF STUDENTS IN SCHOOLS OF AGRICULTURE AND MECHANIC ARTS, 1903—1911

	1903	1904	1905	1906	1907	1908	1909	1910	1911
Agriculture	2,471	2,331	2,473	2,963	3,930	4,566	5,873	7,161	7,696
Domestic science	637	674	717	833	1,030	1,319	1,443	1,617	2,258
Mechanic arts	10,535	12,236	13,000	13,937	15,896	17,411	17,435	17,259	17,862
Short and special courses	5,486	5,658	5,131	6,420	7,776	9,060	11,203	8,143	8,930
All departments	44,719	46,435	48,593	54,974	56,548	62,098	66,099	73,536	88,713

Normal Schools.—Provision is made in all the states for free tuition for student teachers, and in some states their living expenses are partly paid from public funds. In 1910 there were 196 such institutions, in which were enrolled 79,576 students, including 17,096 male and 62,450 female. The total number of teachers was 4,814, including 1,692 male and 3,122 female.

Full financial reports were not obtained but 75 of the normal schools reporting received from the state for increase of plant $2,635,838 and 170 for current expenses $6,630,357.

High Schools.—The steady and rapid growth of public high schools within the last 20 years may be observed by comparing them with private secondary schools, as shown in the following table covering a period of 20 years, from 1890 to 1910:

TABLE XI. GROWTH OF PUBLIC HIGH SCHOOLS, 1890—1910

Year	Per Cent of Number of Schools		Per Cent of Number of Teachers		Per Cent of Number of Students	
	Public	Private	Public	Private	Public	Private
1889—90	60.75	39.25	55.85	44.15	68.13	31.87
1894—95	68.37	31.63	62.26	37.74	74.74	25.26
1899—1900	75.22	24.78	66.82	33.18	82.41	17.59
1904—05	82.32	17.68	74.29	25.71	86.38	13.62
1909—10	85.15	14.85	78.90	21.10	88.63	11.37

See EDUCATION, AGRICULTURAL; EDUCATION, BUREAU OF; EDUCATIONAL ADMINISTRATION; EDUCATIONAL LAND GRANTS; ILLITERACY; STATE UNIVERSITIES; UNIVERSITIES AND COLLEGES, ENDOWED AND PRIVATE.

References: U. S. Commissioner of Education, *Annual Report* 1910, 1911; *Am. Year Book 1901*, 778, 812, and year by year.

GEORGE E. FELLOWS.

EFFICIENCY. A term nowadays employed in a general way to indicate a system of organization on a scientific basis, for public or private service. Efficiency in government emphasizes the doing things in an economical and effective way; it depends primarily on securing good officials; but lays more stress upon the results than upon the machinery of organization. Efficiency in industry has been applied particularly to a system of which Frederick W. Taylor is an expert, for so arranging the work of a factory or mine or railroad that the men will use their energy to the best advantage; also by parcelling out all clerical and mechanical parts of the work to subordinates and leaving the highly skilled workmen and the foremen to put their time on the constructive parts of the work. The trades unions (*see*), in general, dislike the method, because it discriminates sharply between men of different capacity; and because they think it means a speeding up of the work, so that even if the wages are higher at first, earnings will be reduced eventually. An efficiency system was, in 1912, introduced into the Rock Island Arsenal by the federal authorities; and after threatening a strike the workmen accepted it. **See** LABOR AND WAGES, THEORY OF; PROFIT; WAGES. **References:** F. T. Carlton, *Hist. and Problems of Organized Labor* (1911), ch. xvii; Harrington Emerson, *Twelve Principles of Efficiency* (1912), *Efficiency as a Basis for Operation and Wages* (rev. ed., 1912); L. D. Brandeis, *Scientific Management and Railroads* (1911); H. L. Gantt, *Work, Wages and Profits* (2d ed., 1911); F. W. Taylor, *Scientific Management* (1911).

A. B. H.

EGYPT. **See** CONGO FREE STATE; NEAR EAST, DIPLOMATIC RELATIONS WITH; SLAVE TRADE; SUEZ CANAL.

EIGHT BALLOT BOX LAW. The name popularly given to the South Carolina election law, of which General McGrady was the author (1881). It marked the beginning of ballot reform in the South on an educational basis. The law provided for eight separate ballots for various sets of offices, and for each sort of ballot a separate ballot box was furnished.

O. C. H.

EIGHT-HOUR DAY. McNeill says: "It may be said that the eight-hour movement obtained its great impetus during the [Civil] War." It lends itself conveniently to three shifts of any continuous industry. June 25, 1868, the United States made eight hours the legal day's work for its civil employees; but till 1912 allowed men to work overtime and Sundays for extra compensation. **See** LABOR, HOURS OF. **Reference:** G. E. McNeill, *Eight Hour Primer*, (3d ed., 1907).

C. F. G.

ELASTIC CLAUSE. A name sometimes applied to the clause of the Constitution of the United States which provides that Congress shall have power "to make all laws that are necessary and proper for carrying into execution the foregoing powers" etc. (Art. I, Sec. viii, ¶ 18). **See** IMPLIED POWERS; NECESSARY AND PROPER.

A. C. McL.

ELASTICITY OF THE CURRENCY. In a rural community where goods are exchanged mainly by the passage of money from hand to hand, the adjustment of the supply to the need is vital. In early days the whole United States (but now only sections) had the quality called rural; but the continent of Europe still requires mainly notes, or cash, in its exchanges of goods. In Great Britain and the United States checks drawn on deposit accounts form the chief medium of exchange. Consequently, the question of elasticity in these latter countries affects credit even more than note-issues.

Not that elasticity of notes is unimportant. There is an imperative need for elasticity to meet increased seasonal demands such as arise in "moving the crops," like cotton and grain; but elasticity means, also, the prompt redemption and contraction of the notes when the need has passed. Likewise, in payment of wages, soldiers and sailors, expenses of travel, retail transactions, and all operations in which checks are not used, actual money must be provided. But most important of all, banks should have easy access to notes in order to meet ordinary, or even exceptional, demands by the public, so that they may properly protect their own lawful money reserves from dangerous dissipation into the hands of those who needlessly hoard it.

Elasticity has been usually presented in connection with (1) a seasonal demand, or (2) a financial panic. In the past, the seasonal demand for currency in moving cotton and grain has shown itself in an outward movement in September and October, and a return tide in January. The crop-raising sections, being deficient in capital, borrow in the form of cash for a term sufficient to market their products. Strangely enough, the harvest season when bins and warehouses are bursting is the very time when it is difficult to get money or credit in this country. Such a defect is due not merely to a shortage of actual money but (looking deeper) to an inadequate banking

and credit system. Thus the question of elasticity covers more than the issues of notes.

Not infrequently, it is supposed that the distress felt in a time of financial panic is due to an inelastic note system; and that if notes could be quickly and freely issued, the stress would be effectively removed. In truth, it is the inelasticity of credit which is at fault; that is, the lending power of the banks is rigidly restricted by some bad banking laws. In the national banking system, as soon as surplus reserves (amounts above legal percentage of reserves to deposits) are drawn down, we have no reserves which can be used. Then the lending power of the bank is suddenly stopped; no new loans can be made; old loans are called in; business is paralyzed; and panic conditions arise. This is the result of an inelasticity of credit. If a borrower could get a loan, he would have no difficulty in paying his creditor with a check on a solvent bank. In short, the ability to get a loan is the crux of the whole matter to a borrower with proper security. A banking system fails to function if it is unable to grant a loan to a legitimate borrower at the time when he most needs it.

In the panic of 1907, in the United States—as well as in that of 1893—there was an admitted scarcity of circulation in the hands of the public. This situation, however, was a result, not a cause. Owing to our rigid reserve system, the solvency of a bank is now judged by the amount of its cash reserves. Therefore, at the slightest alarm, the smaller banks call upon their city correspondents for cash; the city banks have no recourse but to respond, even though the decline of their reserves directly reduces their power to lend to their own customers. Thus obliged to protect their own reserves by demand from outside and at home, the city banks were actually unable to pay cash. There resulted a practical suspension of payments in the chief cities of the country. There was just as much money in the United States as before; but it was locked up by fear. As a consequence, some clearing houses issued notes to circulate in the hands of the public (quite independent of the usual clearing house loan certificates, used only between banks).

Such action gave the ground for urging the need of a more elastic note-system as a remedy for panics. While admitting the imperative need of notes for a medium of exchange where notes (or any actual money) are required in exchanging goods, it is obvious that the chief medium of exchange in this country is the check drawn on a deposit account, and which is really elastic. Hence, notes are not the main thing required in an elastic medium of exchange. That is, if the banks can respond to the needs of legitimate customers (having paper based on goods in warehouse or in transit) with a loan, there never can be any lack of a medium of exchange in the deposit-currency. The real lack, if any, is to be found in the inelasticity of the lending power of the bank. Hence the really important question as to elasticity—especially in times of serious financial crises—concerns the organization of credit, rather than the form of the instrument through which the credit is granted. In districts whose notes are customary means of payment, the elasticity of notes is essential; but in urban conditions, it is the elasticity of credit which is essential. And as rural conditions disappear, the latter will become increasingly important. In fact, the agitation of the present day for banking reform is based on the well-recognized fact that our present credit system is inelastic. When banking credit can expand and contract automatically with the actual exchanges of goods, even in times of seasonal increase of production, then the notes, properly based on commercial paper and gold, will take care of themselves, expanding and contracting as the need arises, and avoiding all dangers of over-expansion by a system of rapid redemption.

See Bank, Central; Banking; Currency; Money; Paper Money.

References: O. W. M. Sprague, *Banking Reform in the U. S.* (1911); F. W. Taussig, *Principles of Economics* (1911), I, chs. xxviii, xxx; F. R. Fairchild, "Our Currency Reform Problem" in *Yale Review*, XVI (1907), 56–78; J. F. Johnson, "The Crisis and Panic of 1907" in *Pol. Sci. Quar.*, XXIII (1908), 454–467; W. B. Ridgely, "An Elastic Credit Currency as a Preventive of Panics" in Am. Acad. Pol. and Soc. Sci., *Annals*, XXXI (1908), 326–334; J. L. Laughlin, "Bank Notes and Lending Power" in *Journal of Pol. Econ.*, XVIII (1910), 777–792; T. Cooke, "Financial Coöperation and the Aldrich Plan" in *Am. Econ. Review*, I (1911), 234–251; W. A. Scott, "The Aldrich Banking Plan" in *Am. Econ. Review*, I (1911), 251–262. J. Laurence Laughlin.

ELECTION CERTIFICATE. Certificates of election from some source in a state, are the credentials for one claiming an office. There are different provisions in different states, and different provisions in the same state, for different positions. Election boards in the counties certify the vote of that county to the secretary of state of that state. He, in the presence of the governor or some other state official, makes a canvass of these votes, abstracts them, and officially declares who is elected. The secretary of state or the governor sends certificates of election to those elected. See Corrupt Practices Acts; Election Returns; Election System in United States; Votes, Canvass of. T. N. H.

ELECTION OF REPRESENTATIVES. See Representatives, Election of.

ELECTION RETURNS. Election returns are such documents as the law requires from

the officers conducting an election as evidence of its results. They usually consist of the poll-books, the list of voters, and one or more of the tally-sheets. Such returns stand as *prima facie* evidence of the results of the election until they are overcome by affirmative evidence of their error. The statutes of each state regulate the transmittal and custody of the returns. For example, in Massachusetts the blank forms and envelopes to be used in ascertaining the results of the vote are provided by the secretary of the commonwealth. The removal of the ballots from the ballot-box is in public, and all the proceedings of the count are in full view of the voters. At the end of the count, the ballots, voting lists, and tally sheets are sealed up in the envelopes provided. These, and the clerk's copy of his record of the election results in that precinct, are delivered to the city clerk, who retains them, subject to examination only as authorized by law, for the stipulated time, and then destroys them. Copies of the records of votes for state officers are transmitted by the city clerk to the secretary of the commonwealth, who lays them, with seals unbroken, before the governor and council. The governor, with at least five of the councillors, examines all such copies, and determines who are elected to the several offices. It is generally held that election returns will not necessarily be rejected because of mere irregularities in the returns, in the absence of fraud affecting the result. An election officer who neglects or refuses to make a return, may be compelled by mandamus to perform this duty. See BALLOT; ELECTION CERTIFICATE; ELECTION SYSTEM IN UNITED STATES; ELECTION, CONTESTED; RETURNING BOARDS; VOTES, CANVASS OF. **References:** W. H. Michael, articles "Elections," "Contests," in *Cyclopedia of Law and Procedure* (1905), XV, 374–379; T. M. Cooley, *Constitutional Limitations* (7th ed., 1903).

G. H. H.

ELECTION SYSTEM IN THE UNITED STATES

Definition.—An election is generally defined by the courts to be a selection of a public officer or a functionary by popular vote or by some organized body, in contradistinction to appointment by a single person or officer. An election must always be held under the color of positive law, constitutional or statutory, and the details of election procedure in the United States are thoroughly covered by positive enactment. However, failure to comply with some minor or technical requirements of the law will not invalidate an election unless fraud or dishonesty is shown. Some of the more recent election laws, particularly in the West, expressly warn the judges against narrow construction.

Registration.—The official lists of voters are everywhere prepared in advance of the elections by the registration of those eligible. (1) Personal registration, applied in large cities, requires the voter to appear in person before the registering officers in order to be placed upon the list. (2) Registration by official declaration is commonly employed outside of the large cities, and the registration list is made up by the local authorities subject to revision on demand of interested parties. In some large cities, New York and San Francisco for example, a personal identification law is in force to prevent false registration. To make the participation in elections easier, counties and cities are divided into small precincts, containing a few hundred voters. The election process is controlled by official bi-partisan boards, representing the two parties standing highest in some preceding election. The boards are generally supplemented by watchers, representing the parties having candidates on the ballot. Each party is commonly allowed one or more challengers, whose duty it is to challenge those whose right to vote is doubtful (*see* REGISTRATION).

The Ballot.—The ballot in elections is printed by public authority at public expense and the principle of the Australian or secret ballot is now in force in every state except Georgia and South Carolina. There are, however, several varieties of the Australian ballot. First, there is a Massachusetts ballot, in which the names of all candidates are grouped in alphabetical order under the title of the several offices, so that the voter must indicate each candidate for whom he votes. Secondly, there is the party column ballot, which permits the voter to vote a separate ticket by making a single cross in a circle. The other forms of ballots used in the United States are merely modifications of one or both of these schemes. The names of candidates for office are placed on the ballots either on certificates filed by the officials of party conventions, or, in the case of the direct primary, by the returning officers, or by petition. To prevent ballot box stuffing the use of light weight paper for ballots is forbidden. In all elections official ballot boxes are required and they must be opened for public inspection previous to the opening of the polls.

The law provides for policing the polls during primaries and elections, and election officers are sometimes temporarily vested with the authority of justices of the peace and empowered to punish offenders against good order at elections. In advanced states saloons are shut on

election days and it is unlawful to fix a polling place within a certain radius from a saloon. Internal arrangements of polling places are controlled by law to prevent interference with the freedom of the voter in marking and depositing his ballot.

The Election Process.—When the voter enters the polling place he announces his name and residence distinctly and a record is made in the poll book; thereupon the election official hands him a ballot which is generally numbered to correspond with the number assigned to the elector on the poll book, the first voter after the polls are opened being given number one and the second voter, number two, and so on. The voter is required to prepare his ballot secretly in the apartment provided for him, except that if he cannot read or write or is physically disabled, he may require the assistance of one of the election officials as provided by law. After the preparation of his ballot the voter must fold it as required by law so that the contents shall be entirely concealed. He then hands the ballot to the designated election officer who deposits it in the ballot box; and thereupon a clerk indicates in the poll book that the said elector has duly voted. In case an elector accidentally mutilates a ballot he may secure a second from the election officers by surrendering the mutilated one.

The right of an elector to vote may be challenged by the proper election officials or by the authorized challengers if it is believed that he is not duly qualified or is engaged in some fraudulent practice. It is customary thereupon to administer to the challenged elector an oath or affirmation in which he declares that he will answer honestly all questions regarding his place of residence and his qualifications as a voter. The chairman of the election board thereupon propounds questions to the would-be voter relative to his qualifications. If the challenge (*see*) is withdrawn after the questions are answered and it appears that the elector is duly entitled to vote, an oath is administered to him in which he declares that he possesses the qualifications required by law. Thereupon he is admitted to the polls. If, however, the challenged elector votes after taking the oath he is liable to criminal prosecution for false declarations.

Counting and Canvass.—At the hour prescribed by law for the closing of the polls no more voters are admitted to the polling place, and as soon as the last voter has deposited his ballot the counting must begin. Official and standard tally sheets upon which to record the vote in detail are furnished to the officers at each polling place. It is usual for the chairman, to whose keeping the keys to the ballot box have been given, to open the box. He thereupon takes up the ballots one by one. He opens each ballot and announces distinctly the names of the candidates who have been voted for. In case the ballot has been mutilated or marked by the voter not in the form prescribed by law, it may be rejected; and all such rejected ballots are kept separately and returned with the valid ballots to be examined in case of contest by the proper judicial authorities. In some states the law permits the officers and the watchers to look over the ballots and to object to the result as announced by the chairman in case of disagreement. The election clerks record the results as announced by the chairman and the counted ballots are duly filed in the form required by law. Two or more independent tally sheets are kept by the clerks and at the close of the counting the tallies are totalled and the results officially announced. The tally sheets and poll books are then securely sealed and delivered to the stipulated official of the local unit in which the election precinct is situated—usually the county clerk, or in some instances, particularly in populous centers, a special board. The ballots are likewise packed in the ballot boxes, locked and sealed, and transferred to the higher authorities to be retained for a stipulated period so as to be available upon the order of a proper court in the case of a contested election. The tally sheets despatched to the county clerk or the county or municipal election board, are then reviewed by the duly constituted authorities and the results officially published. In the case of state elections, the results in the counties or municipalities are returned to the state authority, generally the secretary of state, who compiles the total results with the aid of a state board of canvassers.

In case any defeated candidate or interested party believes that the results of the election are invalid on account of illegal voting, fraudulent actions, or incorrect counting, he may file notice with the proper court having jurisdiction over such matters. Protested election cases are thus finally adjudicated by the courts which may order a recounting of the ballots and substitute in every point the judgment of the court for the conclusion of the ordinary election official. In the absence of express provision, a majority is deemed necessary to choice in any election, but statutes providing for elections by plurality have been sustained.

Safeguards for the Purity ot Elections.—To safeguard the purity of the ballot the election law of each state contains a list of penalties for offences against the suffrage. Bribing or giving gifts or gratuities with intent to influence any voter at an election, the acceptance of any such gift or gratuity by a voter, voting by any person not duly qualified to vote the use of threats, violence, and intimidation at the polls, voting more than once, importing voters who are not *bona fide* residents of the districts, inducing voters to remain away from the polls by promises of favors or rewards, negligence or corruption of election officials,

disorderly conduct at the polls, and the sale of liquor on election days are among the serious offences against the suffrage which are defined by laws and punished by appropriate penalties. Elaborate provisions are now made in all advanced commonwealths to control the use of money in elections. Four distinct types of provisions have been devised to accomplish this result. (1) The expenditure of each candidate is regulated by law. Where this provision is applied the amount which the candidate can spend is fixed, and he is compelled to file within a given time a sworn statement giving in detail his receipts and expenditures during the election. (2) In many states, now, the objects for which money can be spent in election campaigns are defined by law and include such matters as the rent of halls and expenses connected with public meetings, preparation and publication of various campaign materials, and the like. The purpose of thus limiting the expenses of the candidates is to give the poor men equal chance with rich men in seeking public office. (3) The financial powers of party committees are now frequently defined by law and each committee is required to keep and file within a given period with the proper public authorities a detailed statement of all money received during the campaign, the names of all contributors and the amount contributed by each, and all expenditures in detail. (4) The extensive use of money in elections by corporations, which has been revealed by recent investigations, has led many states to prohibit absolutely corporations and joint stock associations from giving any money or property in aid of political parties and committees or organizations maintained for political purposes.

A review of the state legislation relative to elections during the past decade shows conclusively that earnest and thoughtful efforts are being made in every important commonwealth to secure to each elector his right to vote according to his own free will and to have his vote lawfully counted, to exclude from the ballot floaters, repeaters, and electors who have been bribed, to secure a fair and honest count of the ballots under public scrutiny, to guarantee impartial judicial review in case of contests, to prevent mere wealth from exercising an undue influence in elections; and to assure to the poor man as well as to his richer neighbor an opportunity of securing an elective office.

See Ballot; Elections, Contested; Elections, Federal Control of; Polls; Representatives, Election of; Suffrage; Votes, Canvass of.

References: C. A. Beard, *Am. Government and Politics* (1910), 672; J. Bryce, *Am. Commonwealth* (4th ed., 1910), II; M. Ostrogorski, *Democracy and the Organization of Political Parties* (1902), II; A. Ludington, "Ballot Law" in *Am. Pol. Sci. Review*, IV (1910), 63-68.

Charles A. Beard.

ELECTION SYSTEMS, COMPARISON OF

In France the registration list is prepared in each commune by an administrative commission. This list is revised and published every year, and voters are given an opportunity either personally or through their representative to secure the registration of their names in case of omission by the board. In Germany, a list of electors is prepared in each electoral district by the *Gemeinde-* or *Ortsvorstand* at least four weeks before the day fixed for the elections to the Reichstag, and is published in time to permit interested parties to demand the addition or exclusion of names. In England the system of registration is far more complicated owing to the various qualifications for voting. The registration list is prepared annually by the overseers of the poor in each parish and published so that any person whose name has been omitted may demand its insertion; or any registered voter may object to names which have been included. Appeals from the list prepared by the overseers lie to a revising barrister (appointed by the judge of the circuit court) whose duty it is to hear the claims and revise the list. The expense of arguing before the revising barrister is met by the political parties. In the United States, the methods of registration range from that employed in the backward rural districts where some local functionary prepares a list from his general knowledge and with the assistance of interested parties, to the method in vogue in great cities like New York and San Francisco where each voter must appear in person before the board of registry in his election precinct, and if necessary comply with the strict provisions of personal identification. (*see* Election System in the United States).

The secret ballot is now well nigh universal and voting by proxy is no longer allowed. The principle of plurality elections has also been generally adopted, but there are exceptions. In Germany, for example, in case no candidate for the Reichstag in a particular district has received an absolute majority, a second election must be held between the two candidates who stood highest at the polls. In France, an absolute majority of the votes cast is necessary for election to the Chamber of Deputies; and in case no one receives such a majority, a second election is ordered, but at

this election the candidate who receives a plurality of the votes is declared elected. In some of the Australian states, however, the principle of second choice is applied where no candidate receives a majority of the first choice votes. In the United States and England the selection of candidates for public office by plurality vote is generally accepted, but the evils which might be attendant upon such a system are largely obviated by the existence of two fairly well balanced parties. The one point in which the elections of the United States differ from those in other countries is in their complexity, due to the large number of elective offices. A resident of an English city, for example, is not called upon to pass upon candidates for more than one office at the same time, while in the United States sometimes as many as forty or fifty offices are filled at one election. (*see* BALLOT; BALLOT, SHORT). These offices vary greatly in importance—from court clerkships to the presidency of the United States. The complexity of this system requires more highly organized party machinery for its operation, and is in large part responsible for the strength of party organization (*see*) in the United States. This complexity of elections is also responsible for the complexity of the nominating system which presents the United States in striking contrast to England where the candidates for Parliament are put up by ten registered voters—a proposer, a seconder, and eight others. Compare this, for example, with the direct primary (*sec*) in an American commonwealth, which is virtually an election within the party to nominate candidates. There is a general tendency to make the cost of elections a public charge. This is true in Germany for elections to the Reichstag, and in France for elections to the Chamber of Deputies, and universally in the United States. In the last country even the cost of the ballots for regular elections, and frequently for primary elections, is thrown upon the public treasury; and in Colorado provision was made for the payment of a stipulated sum of money to each political party, apportioned according to its vote, to be used in defraying its campaign expenses; but a state court declared the law void. In England, on the other hand, the cost of erecting polling booths, the wages of election officials, and the other expenses connected with the conduct of the election, are divided among the candidates; the total cost of a general parliamentary election in England is nearly a million dollars, to say nothing of the campaign expenses, and this constitutes a considerable burden upon the candidates. In all countries the purity of the ballot is more or less safeguarded by corrupt practices acts which regulate the expenditure of money for elections, define the uses to which it may be applied, and penalize bribery, intimidation and undue influence. In Germany, for example, the criminal code forbids the use of force or threats in elections, and lays special penalty upon public officials who misuse their offices in attempting to influence voters. Since the Corrupt Practices Act of 1883 England has been steadily extending the principle of public control over expenditures for elections, and over the use of undue influence. France is not so far advanced in this type of legislation as is England, and numerous complaints arise there on account of the interference of the administration in the elections for the Chamber of Deputies. In reviewing the election systems of other countries it becomes apparent that many of the states in the United States have gone further in the direction of subjecting party organization to legal control and providing the election expenses from the public treasury.

See BALLOT; NOMINATING SYSTEM; PARTY; PARTY SYSTEM IN EUROPE; PRIMARY, DIRECT; SUFFRAGE; VOTERS, REGISTRATION OF.

References: A. L. Lowell, *The Government of England* (1908), I; A. Lebon, *Das Verfassungsreeht der französisehen Republik* (1909), 73; P. Laband, *Deutehes Reichstaatsreeht* (1908); J. Bryce, *Am. Commonwealth* (4th ed., 1910), II, 146–230; C. A. Beard, *Am. Government and Politics* (1910), 672.

CHARLES A. BEARD.

ELECTIONS, CONTESTED. In the United States the determination of contested elections to legislative and executive offices has generally been considered a political matter, to be dealt with by political agencies. Thus, in the failure of a majority vote in the electoral college, the Federal Constitution referred the election of President to the House, and of Vice-President to the Senate; and the knot was thus cut in the election of Jefferson in 1801, and of John Quincy Adams in 1829, and of Richard M. Johnson, as Vice-President, in 1837. In 1876 a perplexing question arose as to which of rival groups of electors from four of the states should be recognized as validly elected (*see* ELECTORAL COMMISSION). To prevent the recurrence of any such contest, Congress enacted a law in 1887 which provides that each state, by its own laws, may designate a tribunal which shall determine what electoral votes from the state are legal votes; if no such tribunal has been appointed in case of double returns, the vote of the state is lost, unless the two houses agree as to which returns are legal.

In Stuart days, when the courts were subservient to the king, the Commons asserted the right to decide contested elections to its own membership. Despite the fact that during the reign of George III this exclusive right was being prostituted to the purposes of party more than ever before, there was incorporated in the Constitution of the United States the provision that each house of Congress shall "be the judge of the election, returns and qualifications of its own members" (Art. I, Sec.

v, ¶ 1). In 1868 the trial of contested elections in England was transferred from the Commons to the courts; but in this country we still follow an ill-chosen precedent.

In Congress.—In Congress contests are frequent, arising generally over some alleged irregularity in the election—a misconduct or the presence of bribery or corruption. The procedure in the House is in accordance with statute law (*Rev. Stat.* Secs. 105–130) although the power of any House, under its grant from the Constitution, to disregard this statute is indisputable. Notice of a contest must be given within thirty days of the determination of the results of an election; answer must be returned within thirty days, and ninety days are allowed for the taking of testimony. In the Senate a committee on elections investigates these contests; in the House three committees are assigned to this task. The committee is, of course, always in the control of the party which has a majority in that branch, and its report is usually accepted. That "the decisions are made by numbers and not according to justice" was declared by a report from the House Committee on Elections, January 25, 1895, which stated that "the record of the last ten congresses shows that 45 seats have been taken from the minority, and substantially none from the majority." The committee reported favorably a bill to give United States district courts jurisdiction first over contests for seats in the house. It was urged that British experience since 1868 had proved that the handling of contested elections had not made the judiciary partisan, nor had the judges arbitrarily determined the membership of the Commons. It was not denied that the House of Representatives would still retain full power in passing upon such cases, but it was affirmed that in passing finally upon precisely the same record that had been pasesd upon by the courts, the house "would hesitate to make a purely partisan decision and reverse a finding already made by a judicial tribunal."

Aside from the generally partisan nature of the decision of these contests, the dilatoriness and expense of this procedure have deserved much criticism. In 1903, a contestant from the twelfth Missouri district was given his seat in the last week of that Congress, and drew $10,000 as his salary for the full term of two years, though he served but a single day, meantime, the man who was unseated had been paid nearly $10,000 in salary, and the contestant and the contestee were each paid $2,000 twice on account of their expenses in the two contests for the seat. So liberal an allowance for expenses inevitably incites the multiplication of such contests.

In State Legislatures.—Most of the states have followed the precedent of the Federal Constitution in making each house of the legislature the judge of the qualifications and elections of its own members; and not a few city charters apply this same process in contests for membership in the city council. How grave a danger this may involve has repeatedly been made clear. Thus, in 1903, Colorado was greatly excited over an impending senatorial election. Republicans in the house, alleging election frauds, unseated just enough Democrats to assure a Republican majority in the joint assembly; but before the election could be effected, Democrats in the senate, by precisely the same tactics, unseated enough Republicans to regain for the Democrats a majority in joint session; and they elected their candidate, though it was threatened to oust them by military force.

Twenty-four states give to the legislature the power to try contested elections for the governorship and one or more other state offices. In California, Pennsylvania and Delaware such contests are decided by a joint committee of both houses. In some states, the legislature is virtually the supreme canvassing board for all state elections. In insisting that, in the absence of a popular majority for any candidate, the election of governor be made by the legislature, New Hampshire retains a procedure which in other states (notably in Connecticut, 1891–92) has yielded such bad results as to force the acceptance of plurality elections. When a state has prescribed no procedure to determine contested elections, the only remedy at common law is by quo warranto, the court, upon proper application, inquiring by what authority a person assumes to exercise the functions of a given office, and ousting him, in case no authority be shown.

See ELECTION SYSTEM IN U. S.; ELECTORAL COMMISSION; ELECTORAL COUNT; VOTES, CANVASS OF.

References: F. R. Mechem, *Law of Public Offiees and Officers*, (1890) 213–238; G. W. McCrary, *Am. Law of Elections* 4th ed., (1897), 279–386; P. S. Reinsch, *Am. Legislatures* (1907), 213–222; G. S. Taft, *Sen. Election Cases* (1903); W. H. Michael, "Elections: Contests" in *Cyclopedia of Law and Procedure* (1905), XV, 393–441; T. M. Cooley, *Constitutional Limitations* (7th ed., 1903).

GEORGE H. HAYNES.

ELECTIONS, CORRUPTION IN. See BOSS; BRIBERY; CORRUPTION, POLITICAL; CORRUPT PRACTICES ACTS; FRAUDS, ELECTORAL; INTIMIDATION; MACHINE, POLITICAL; REFORM MOVEMENTS; VOTERS, COLONIZATION OF.

ELECTIONS, FEDERAL CONTROL OF. The Constitution gives the Federal Government large powers over state elections at which Senators and Representatives are chosen, and Congress undoubtedly has authority to make provisions for safeguarding the rights of suffrage guaranteed in the Fourteenth and Fifteenth Amendments (*see*). The Constitution provides that the times, places, and manner of

holding congressional elections shall be prescribed in each state by the legislature thereof, but authorizes Congress to make or alter by law such regulations, except as to the place of choosing Senators (Art. I, Sec. iv, ¶ 1). The states, however, are exceedingly jealous of the exercise of this power, and at the present time only a few matters relative to elections are covered by federal law, and there is no federal supervision at all. In 1842 it was provided that the members of the House of Representatives should be chosen by districts, and this provision has been continued. In 1866 an act was passed prescribing the procedure to be followed by the state legislatures in choosing Senators. Both of these laws were hotly contested on constitutional grounds, but the constitutional warrant for them seems perfectly clear. The most noteworthy acts providing for federal control grew out of the reconstruction (*see*) of the southern states. On May 31, 1870, Congress passed a general law designed to secure to all persons otherwise qualified the right to vote at all elections without discrimination on account of race, color, or previous condition of servitude. Penalties were imposed upon those guilty of discriminatory acts, and federal courts were given jurisdiction over offences. This act was supplemented by the act of February 28, 1871 (referring particularly to elections of Representatives). This act among other things made provision for the appointment of election inspectors in cities by the circuit judges on application. This act further provided that voting for Representatives should be by ballot. These acts were directed against corrupt practices in northern cities as well as against the southern states. They were bitterly attacked. Some parts were declared unconstitutional by federal courts, and the important sections (providing for federal supervision) were repealed in 1894. On February 2, 1872, Congress fixed the date for congressional elections for the Tuesday following the first Monday in November beginning in 1876—modified on March 3, 1875, so as to allow some exceptions to the uniform rule. The general position taken by the courts on all this legislation was that Congress "can by law protect not only the act of voting but the place where it is done, and the man who votes, from personal violence or intimidation, and the election itself from corruption and fraud." Apart from the passage of an amendment to the Constitution providing for the election of Senators by direct vote of the people, recent congressional legislation relative to elections has pertained to party activities. In 1906 a law was passed forbidding contributions by corporations to campaign funds, and more recently provision has been made for the publicity of campaign contributions. See CONGRESS; ELECTORAL COUNT; PARTY EXPENDITURES, PUBLICITY OF; REPRESENTATIVES, ELECTION OF; SENATORS, ELECTION OF. References: *Statutes at Large, 1870, 1871, 1872*; W. M. McKinley and C. C. Moore, *Federal Statutes Annotated* (1903), II, 211, 863; *Ex parte* Yarbrough, 110 *U. S.* 651 (1884); *Ex parte* Siebold, 100 *U. S.* 371 (1879); *Ex parte* Clarke, 100 *U. S.* 399 (1879).

CHARLES A. BEARD.

ELECTIONS, PRESIDENTIAL. See PRESIDENTIAL ELECTIONS.

ELECTIVE FRANCHISE. See SUFFRAGE.

ELECTORAL COLLEGE. Electoral College is the name given to the meeting of the presidential electors (*see*) in each state. The term was used legally for the first time in the congressional law of 1845, although it had been in use informally in several earlier presidential elections. On the second Monday in January following their appointment, the electors meet in their respective states in places designated by the legislature. Before 1887 the meeting was on the first Wednesday in December. See ELECTORAL COUNT; PRESIDENTIAL ELECTIONS.

R. L. A.

ELECTORAL COMMISSION. Shortly after the general election of November, 1876, it was apparent that Tilden and Hendricks, the Democratic nominees for the presidency and vice-presidency, were certain to receive 184 electoral votes, one less than a majority; that Hayes and Wheeler, the Republican nominees, would receive 165 votes; and that twenty votes were in doubt. In South Carolina, the Republican electoral candidates had substantial majorities on the face of the returns, but the Democrats contested the result. In Louisiana, the Democratic electoral candidates received majorities of the votes cast, and this was probably true in Florida, but Republican returning boards, alleging Democratic intimidation and other irregularities, threw out enough votes to give majorities to the Republican candidates. Ultimately there were three certificates from each of these states, besides a fourth burlesque certificate from Louisiana. The Republicans had carried Oregon, but the Democrats claimed that as one of the Republican candidates was a postmaster at the time of the election, though not at the time of the meeting of the electoral college, he was disqualified (Const. Art. II, Sec. i, ¶ 2), and that this served to elect the Democratic candidates who had received the highest number of votes.

The crux of the contest lay in the power to count and declare the electoral vote. The Constitution provides that "the President of the Senate, shall, in the presence of the Senate and House of Representatives, open all certificates, and the votes shall then be counted" (Art. II Sec. i. ¶ 3). Extreme Republicans interpreted this to mean that the Republican President of the Senate had power to count the

votes and hence to decide what were the true votes. Other Republicans and practically all Democrats held that the counting was to be done under the direction of the two houses, meeting either together or separately. The Democrats were certain that no vote could be counted without the consent of the House of Representatives, in which they had a majority.

A joint committee ultimately reported a bill to refer conflicting returns to a committee of fifteen, composed of five representatives, five Senators. and five Associate Justices of the Supreme Court. This extra-constitutional tribunal was to consider such cases "with the same powers, if any, now possessed for that purpose by the two houses acting separately or together." The decision of the commission was to stand unless rejected by the separate vote of both houses. The bill passed by large majorities, and was signed by President Grant on January 29, 1877. In accordance with a previous understanding, the Senate chose three Republicans, Edmunds, Frelinghuysen, and Morton; and two Democrats, Thurman and Bayard. The House chose three Democrats, Payne, Hunton, and Abbott; and two Republicans, Garfield and Hoar. Two Democratic justices, Clifford and Field, and two Republicans, Strong and Miller, had been indirectly designated by the act, and to them had been intrusted the task of selecting the fifth. The four chose Justice David Davis, but he refused to serve, and they then named Justice Joseph P. Bradley. Before the commission finished its labors Senator Thurman became ill, and Francis Kernan of New York was substituted.

On February 1, 1877, Congress, in joint session, began to count the electoral votes, and the same day the Florida case was referred to the commission. By a vote of eight to seven (Bradley voting with the majority), the commission awarded the votes of Florida to Hayes. Similar decisions were reached in the cases of Louisiana and South Carolina; in each case the commission refused to go into evidence *aliunde* the regularly certified returns presented from those states. In the case of Oregon, however, the commission went behind the certificate of the Democratic governor and accepted (eight to seven) the return that was accompanied by a certificate of the result furnished by the secretary of state. The majority of the commission was bitterly criticised for gross inconsistency, but merely followed the extremely convenient line of cleavage between state and federal powers. The decisions of the commission were in every case rejected by the Democratic House and accepted by the Republican Senate; all of the disputed votes, therefore, were counted as cast for Hayes and Wheeler, and, March 2, 1877, they were duly declared elected.

See Elections, Contested; Electoral Count; Elections, Federal Control of; Hayes, Rufus B.; Republican Party; Tilden, Samuel J.

References: J. H. Dougherty, *The Electoral System of the U. S.* (1906), chs. iv–viii; P. L. Haworth, *The Disputed Presidential Election of 1876* (1906); "Electoral Commission" in *Cong. Record,* 44 Cong. 2 Sess., I; J. F. Rhodes, *Hist. of U. S.* (1906), VII, ch. xliv.

Paul L. Haworth.

ELECTORAL COUNT FOR PRESIDENT

Constitutional Provisions.—The Constitution of the United States provides that when the presidential electors (*see*) have met in electoral college (*see*) and forwarded lists of votes to Washington, "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all of the certificates and the votes shall then be counted" (Art. II Sec. i, ¶ 2). There had been no discussion in the convention of 1787 regarding the counting, but the final resolution of the convention, which provided for putting the Constitution into effect, if adopted by the states, provided "that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President." It is reasonably clear that it was the intention of the framers of the Constitution that Congress should not control the counting of the electoral votes; because (1) election by Congress had been agreed upon, but later had been abandoned for fear that Congress would control the executive; and (2) because there is no mention of congressional right to count the electoral votes in the clause (Art. II, Sec. i, ¶ 3) which gives Congress power to determine the day for choosing the electors and the day on which the electors give their votes. The language of the resolution which accompanied the Constitution on its submission to the states, and the failure to provide for any different or more specific method of counting in the Twelfth Amendment, imply that Congress should not count the votes.

Congress Assumes Power.—There seems to have been little dispute about the counting for a third of a century, and no serious controversy over the counting of the votes for a half century longer. As early as 1817, however, the Senate proposed "to proceed in opening the certificates and counting the vote," and, the House agreed "to proceed to open and count the votes." In 1821, a resolution passed by the houses of Congress provided for "counting in

the alternative" (*see*); that is, the houses declared that the president of the Senate announce that if the vote of Missouri were to be counted, the result would be for A. B. — votes; if not counted, for A. B. — votes; but in either case A. B. was elected. A similar device was used in 1837 in regard to the vote of Michigan. This power was gradually assumed by the houses. Owing to the fear that the states of the Confederacy might attempt to choose electors, Congress, in 1865, adopted what was known as "joint rule twenty-two." This rule provided that, in the counting of electoral votes, Congress should decide disputed questions, but that "no vote objected to shall be counted, except by the concurring votes of the two houses." Under this rule Congress kept the unreconstructed states from casting electoral votes. The rule was abandoned in 1875 as the House was Democratic. The determination of the vote in 1877 was purely extra legal (*see* ELECTORAL COMMISSION).

Electoral Count Act of 1887.—Several attempts had been made before 1877 to provide a law for the counting of electoral votes. The most notable of these was the Federal bill of 1800 which proposed congressional supervision. This Senate bill provided that a grand committee of thirteen, composed of six members from each house and one additional Senator chosen from three candidates by the House of Representatives, should, secretly and finally, examine and decide upon the qualifications and appointment of all presidential electors. This bill passed the Senate, but the House of Representatives amended it by allowing the committee to investigate and report only. The House insisted that all votes of the states should be counted unless both houses of Congress concurred in rejecting the vote. The houses did not agree upon a bill, so that no law for the counting of electoral votes was made at that time. Immediately following the Hayes-Tilden controversy (1877), Senator Edmunds of Vermont sought to secure a law for Federal supervision. Finally, in 1887, a bill introduced by him in 1885 was adopted, after considerable modification. The act of 1887 designates the second Wednesday of February succeeding the meeting of the electors as the day for counting the votes. (I) If any state shall have provided by law, before the selection of the electors, for the final determination of contests regarding appointment, and shall have determined all contests according to that law, its decision shall be final, unless the regularity of the state's action is questioned by both houses, in which case the vote shall be rejected. (II) In case more than one return is received from any state the question is decided as follows: (1) If the state shall have determined that the votes forwarded in one return were given regularly, then those votes shall be counted. (2) If two authorities in the states, each claiming to be the proper authority, shall have determined that different sets of returns were given properly, then those electoral votes only shall be counted which the two houses of Congress agree were determined by the proper authority. (3) If the state shall have made no determination of contested electoral votes, then both houses of Congress may determine which electoral votes were given regularly; but, if the houses cannot agree, the votes of these electors whose appointment is certified by the governor of the state shall be counted. The houses sit in joint assembly while the electoral votes are counted, but if any state's return is protested, the houses separate, discuss the question and reach a decision before reassembling. No discussion or decision is permitted in the joint assembly. This law has not been tested either in practice or in the courts, but it recognizes the right of Congress to decide all disputed questions in regard to the counting of electoral votes which the state has not decided finally, or has decided irregularly.

See PRESIDENTIAL ELECTIONS.

References: J. H. Dougherty, *Electoral System of the U. S.* (1906); J. W. Burgess, *Pol. Sci. and Constitutional Law* (1891), II, 223–238; text of Law of 1887 in W. MacDonald, *Select Statutes, 1861–1898* (1903), No. 113.

R. L. ASHLEY.

ELECTORAL FRAUDS. See FRAUDS, ELECTORAL.

ELECTORS, PRESIDENTIAL. Those persons, equal in number to the Senators and Representatives, appointed by each state on the Tuesday following the first Monday in November of the years divisible by four, in such manner as the legislature may direct, for the purpose of selecting the President and Vice-President of the United States. See ELECTORAL COLLEGE; PRESIDENTIAL ELECTIONS; TWELFTH AMENDMENT. R. L. A.

ELECTRIC LIGHTING. See LIGHTING, ELECTRIC.

ELECTRIC RAILROADS. See RAILROADS, ELECTRIC.

ELEPHANT, REPUBLICAN. A pictorial symbol of the Republican party originated by Thomas Nast and first published in *Harper's Weekly*, November 7, 1874. O. C. H.

ELEVATED RAILROADS. See RAILROADS, ELEVATED.

ELEVATORS, FREIGHT AND PASSENGER. The right of the city, state, or national government to regulate freight and passenger elevators rests in the police power as a reasonable precaution to protect life, and further public interests. Most of the regulations center

around requirements as to safety devices. These are usually specified, and most cities provide for their inspection. The device now most frequently used is an air cushion or chamber into which the cage drops, when falling, the compression of the air bringing it to rest without shock. Such elevators usually range in sizes suitable for loads of from one thousand to five thousand pounds and have speeds of from eighty to two hundred and fifty feet per minute unloaded, and from seventy-five to two hundred feet per minute loaded. In certain large buildings the maximum speed attainable is six hundred feet per minute. See BUILDING LAWS; POLICE POWER. C. L. K.

ELEVATORS, GRAIN. In the United States, grain elevators include both buildings and machinery. (In Europe, the word granary or American elevator is used.) The right of the public to regulate grain elevators was first definitely established by the United States Supreme Court in 1876, in the famous case of Munn *vs.* Illinois (94 *U. S.* 113). The question before the court was whether it was constitutional for a state to fix by law the maximum charges for the storage of grain in warehouses and elevators. The court decided that the principle of common carriers should be applied to grain elevators, and that the private property therein invested was sufficiently devoted to public use to warrant public regulation. The court reached this decision not only because grain elevators were essentially common carriers, but also because their positions at the very "gateways of commerce" gave to them a virtual monopoly. At present legislation uniformly provides that charges for use of grain elevators must be reasonable and that they must give a reasonable service. See AGRICULTURE; LABOR, RELATION OF THE STATE TO; PUBLIC UTILITIES; RAILROAD COMMISSIONS, STATE; TRANSPORTATION, REGULATION OF.

C. L. K.

ELEVENTH AMENDMENT. The decision in Chisholm *vs.* Georgia (*see*) that the judiciary article of the Federal Constitution (Art. III, Sec. ii) vested in the Supreme Court authority to entertain actions on money claims against a state by a citizen of another state, caused surprise and created anxiety in some of the states. Several other actions of like character had been brought and were pending in the Supreme Court. The decision was contrary to the views of Hamilton as expressed in the *Federalist* (No. LXXXI) and like views expressed in several state conventions by friends of the Constitution to meet the objection that the Constitution would be so construed and the sovereignty of the states impaired. It was under these circumstances that the Eleventh Amendment was proposed by Congress and, after four years, ratified by the states (1798):

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The language of the Amendment was held by the Supreme Court to be broad enough to cover actions already commenced and those pending in the Supreme Court were thereupon dismissed. In Cohens *vs.* Virginia (*see*) this amendment was held not to preclude a writ of error (*see*) to the United States Supreme Court sued out against a state, party to an action in its own courts. In New Hampshire *vs.* Louisiana (1883, 108 *U. S.* 76) it was held that the Amendment precluded suits against a state by another state on a money claim due to a citizen of the latter state which should seek to represent him nominally as sovereign or as a volunteer assignee or trustee. Further it was held in Hans *vs.* Louisiana (1890, 134 *U. S.* 1) that although the Amendment did not forbid an action in the federal courts by a citizen against his own state, such an action was in its subject matter not such as contemplated in the Constitution under the article specifying the jurisdiction of the federal courts; and that although it involved a constitutional question (impairment of obligation of contract), which as between other parties would have given the court jurisdiction, no such jurisdiction existed where the claim was against a state. In this case the court plainly intimated that the views of the majority of the court in Chisholm *vs.* Georgia were erroneous and that without any amendment the jurisdiction of the Supreme Court should not have been held to extend to actions on money demands against states. Finally, however, in South Dakota *vs.* North Carolina (1804, 192 *U. S.* 286) it was held by a divided court that one state holding in its own right, although by assignment from a citizen, a claim for money against another state, could prosecute an action therefor in the Supreme Court against such state.

The final result is that, where the jurisdiction of the federal courts is invoked on the ground solely that one of the parties to the controversy is a state, the subject matter being immaterial, the Eleventh Amendment excludes the jurisdiction only in the cases specified; that is, suits in law and equity against one of the states by citizens of another state or of any foreign state; and that under the decision of Chisholm *vs.* Georgia, which is still adhered to, a state of the union notwithstanding its sovereign character is amenable in the federal courts to suits, other than those expressly prohibited, so far as they come within the specified jurisdiction of such courts on account of the nature of the parties; but that if the jurisdiction is asserted on the ground of the nature of the subject matter—as was the case in Hans *vs.* Louisiana—the states are not suable. Thus it was held in United States *vs.* Texas (1891, 143 *U. S.* 621) that the juris-

diction of "controversies to which the United States shall be a party" includes actions by the United States against a state.

See Constitution of the United States, Amendments to; Courts, Federal; Court, Federal, Jurisdiction of; Federal Question; States as Parties to Suits.

References: J. B. McMaster, *Hist. of the People of U. S.* (1885), II, 182–185; H. V. Ames, "Proposed Amendments to the Constitution of U. S." in Am. Hist. Assoc., *Annual Report*, 1897, II, 157–164; J. Story, *Commentaries* (5th ed., 1891), II, § 1685.

Emlin McClain.

ELIOT, CHARLES WILLIAM. Charles W. Eliot (1834–) was born at Boston, Mass., March 20, 1834. He graduated from Harvard in 1853, was tutor in mathematics in 1854, and from 1858 to 1863 was assistant professor of mathematics and chemistry. After two years' study in Europe, he became, in 1865, professor of analytical chemistry in the Massachusetts Institute of Technology. In 1869 he was elected president of Harvard, a position which he filled with extraordinary distinction for forty years, resigning in the fullness of his power in 1909. The introduction of the elective system for undergraduates, and the development of the professional schools on a graduate basis, are among the notable features of an educational revolution which transformed Harvard from a college into a university, and profoundly influenced both secondary and higher education throughout the country. Dr. Eliot was president of the Civil Service Reform League from 1908 to 1911. He was a strong advocate of commission government for cities, and spoke and wrote freely on the subject. After retiring from the presidency in 1909 he became interested and active in the peace movement (*see*). Besides his annual reports and numerous occasional addresses, he published *Five American Contributions to Civilization* (1897), *Educational Reform* (1901), and *University Administration* (1908). See Education as a Function of Government; Educational Administration; Universities and Colleges, Endowed and Private. References: F. W. Taussig and C. F. Dunbar, "President Eliot's Administration," in *Harvard Graduates' Magazine*, XVII (1909), 375–390, 407–430.

W. MacD.

ELKINS ACT. The Elkins Act of February 19, 1903, was enacted to prevent secret railroad rebates and discriminations. The corporation as well as the officer giving the rebate was made punishable; the penalty was not less than $1,000 nor more than $20,000 for each offense; the acceptance as well as the offer of a rebate or unlawful discrimination was a violation of the law; the published rate was declared to be the only lawful charge, and the United States circuit courts were authorized to enjoin carriers to charge only the published rates. The law proved most effective, and was incorporated, with slight changes, in the Hepburn Act (1906) and the Mann-Elkins Act (1910). See Monopolies; Railroads, Regulation of; Sherman Anti-Trust Act; Trusts. References: E. R. Johnson, *American Railway Transportation* (1908); D. C. Moore, *Interstate Commerce* (1910); *Am. Year Book, 1910*, 543.

E. R. J.

ELMIRA COMPACT. An agreement entered into in 1905 by the political managers of the city of Elmira and the county of Chemung, New York, for the purpose of limiting election expenditures, eliminating bribery at elections, and prosecuting violations of election laws. It was observed until 1908 when the Republican managers are said to have refused to join in its renewal. See Party Expenditures, Publicity of.

O. C. H.

EMANCIPATION BY STATES. The theory of colonial governments was that each colony had the right to provide for the status of individuals within its limits; and when the Revolution came on slavery was legal in every one of the thirteen colonies. Vermont, a region in which there was but a handful of slaves, in setting up as an independent commonwealth January 17, 1777, included in the declaration of rights, the clause; "all men are born free and independent . . . and therefore all bound persons are to be set free on attaining their majority." This was practically an immediate abolition act.

In Pennsylvania, where there long had been an anti-slavery agitation in the legislature, an act was passed March 1, 1780, to the effect that all children born within the state thereafter should be free from permanent slavery. The legal slaves then in the state, about four thousand in number, were not set free, but gradually diminished by death or emancipation till they disappeared in 1850. In Massachusetts there had been "freedom suits" in the courts at intervals for years. The constitution of 1780 drawn by John Adams, a well known foe of slavery, contained the phrase "all men are born free and equal." During 1781 the Massachusetts courts held that slavery was thereby extinguished in Massachusetts. The New Hampshire constitution of 1783 contained the same clause, which had the same effect. By an act of 1784, Connecticut followed the example of Pennsylvania, by enacting that persons born after the statute should not serve beyond twenty-five years of age. The 2,600 slaves in the state were by 1840 reduced to 17. Rhode Island, in which there had been a considerable number of negro soldiers, passed a statute similar to the Connecticut statute in 1784. In New York a contest was waged for many years, till in April, 1799, a graduate emancipation act was passed. In 1817 a new

EMANCIPATION of SLAVES
by STATE ACTION.
States & Territories
shown as in 1865.
Free by State Action only
L.L. POATES ENG. CO., N.Y.
Longitude West from Greenwich
PACIFIC OCEAN
ATLANTIC OCEAN
DOMINION OF CANADA
MEXICO
WASHINGTON TER.
OREGON 1859
CALIFORNIA 1850
NEVADA TER.
IDAHO TER.
MONTANA TER.
DAKOTA TER.
UTAH TER.
COLORADO TER.
ARIZONA TER.
NEW MEXICO TER.
NEBRASKA TER.
KANSAS 1861
INDIAN TER.
TEXAS
Free by Supplementary Action of State 1865
MINNESOTA
Free by Supplementary Action of State 1858
IOWA
Free by Supplementary Action of State 1846
MISSOURI 1864
ARKANSAS
Free by Supplementary Action of State 1865
LOUISIANA
Free by Supplementary Action of State 1865
WISCONSIN
Free by Supplementary Action of State 1848
ILLINOIS
Free by Supplementary Action of State 1818
MISSISSIPPI
OHIO
Free by Supplementary Action of State 1803
KENTUCKY
TENNESSEE 1865
ALABAMA
GEORGIA
Free by Supplementary Action of State 1865
FLORIDA
Free by Supplementary Action of State 1865
WEST VIRGINIA 1863
VIRGINIA
NORTH CAROLINA
PENNSYLVANIA 1780
NEW YORK 1799
NEW JERSEY 1804
MASS. 1780
MAINE 1780
L. Superior
L. Michigan
L. Huron
L. Erie
L. Ontario
St. Lawrence R.
Missouri R.
Columbia
Red River
Arkansas R.
Red R.
Rio Grande
Colorado R.

statute provided for unconditional emancipation, on July 4, 1827, of all slaves, the number of which had already been reduced from 21,000 to 10,000. New Jersey passed a gradual emancipation act February 15, 1804. There were then over 12,000 slaves in the state, and as late as 1860, 18 were still enumerated. Maine, as a district of Massachusetts, participated in the act of 1780, and in 1820 adopted an anti-slavery constitution. The five states made out of the Northwest Territory, all came in with anti-slavery constitutions, as did Iowa, California, Minnesota, Oregon and Kansas.

During the Civil War emancipation was enacted by three border states. In the constitution of West Virginia, dated March 21, 1862, was included a provision for gradual emancipation. In Maryland the constitution adopted October 10, 1864, included an absolute abolition clause. In Missouri, the convention of 1864 passed a gradual emancipation act to take effect after 1870; and June 6, 1865, a constitution was adopted which asserted immediate abolition.

A few days earlier the Thirteenth Amendment was submitted by two-thirds majority in both Houses of Congress; but while it was pending, the southern states under President Johnson's reconstruction plan, adopted new constitutions in which slavery was prohibited. Kentucky and Delaware are the only former slaveholding colonies or states, therefore, which did not at some time and in some form prohibit slavery.

See Abolitionists; Citizenship; Freedom, Personal; Slavery Controversy; Thirteenth Amendment.

References: M. S. Locke, *Anti-Slavery in America* (1901); A. D. Adams, *Neglected Period of Am. Anti-Slavery* (1908); Mass. Hist. Society, *Collections*, 1st Ser., IV (1835); J. C. Hurd, *Law of Freedom and Bondage* (1858–62); J. F. Jameson, *Essays* (1889), 293; J. K. Hosmer, *Outcome of the Civil War* (1907), ch. xiii, *Appeal to Arms* (1907), ch. xiv; W. A. Dunning, *Reconstruction* (1907), ch. i–iv; N. D. Harris, *Negro Servitude in Illinois* (1904); list of books and articles on state slavery in Channing, Hart and Turner, *Guide to Am. History* (rev. ed., 1913), § 179. Albert Bushnell Hart.

EMANCIPATION PROCLAMATION. September 22, 1862, President Lincoln issued a proclamation concerning the freedom of the slaves in the southern states where the people were then engaged in war. He declared that, as heretofore the war would be prosecuted for the restoration of constitutional relations between the United States and the several states, and that it was his purpose to recommend to Congress again the adoption of a plan of compensated abolishment of slavery. He announced that on the first of January following "all persons held as slaves within any state or designated part of a state the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free;" that on that day he would, by proclamation, "designate the states and parts of states, if any, in which the people thereof" should be in "rebellion against the United States." This proclamation also called attention to certain acts of Congress concerning fugitive slaves. In accordance with this announcement, on the first of January a supplementary proclamation was issued. It came from "Abraham Lincoln, President of the United States" by virtue of the power vested in him as "Commander in Chief of the Army and Navy of the United States in time of actual armed rebellion against the authority and government of the United States, and as a fit and necessary war measure for suppressing said rebellion." It declared free all persons held as slaves in Arkansas, Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina and Virginia; but New Orleans and certain parishes in Louisiana, the forty-eight counties designated as West Virginia and certain counties and cities in Virginia were expressly excepted, the excepted parts to be for the present "left precisely as if this proclamation were not issued." The President enjoined on the freedmen abstention from violence, "unless in necessary self defense" and recommended that when allowed "they labor faithfully for reasonable wages." See Republican Party; Slavery Controversy; Thirteenth Amendment. References: J. D. Richardson, *Messages and Papers of the Presidents* (1897), VI, 96, 157; J. F. Rhodes, *Hist. of U. S.*, IV (1899) 71, 157–164; W. MacDonald, *Documentary Source Book* (1908), 457–459, *Select Statutes, 1861–1898* (1903), 59, 60.

A. C. McL.

EMBARGO. An embargo is a form of reprisal by which ships or other property are provisionally seized or detained by order of a state. Embargo may be civil when it applies only to vessels of the state which establishes it or hostile when it is extended to vessels or goods of a foreign state. Embargoes were formerly resorted to as measures anticipatory of war or measures of redress short of war. These measures have become less frequent with the growth of international commerce; and since the middle of the 19th century the tendency has been not merely to avoid seizure and detention in anticipation of war but also to allow a certain number of "days of grace" for the departure of enemy merchant vessels after the outbreak of war. See Commerce, Governmental Control of; Maritime War, Neutral Trade. Reference: H. W. Halleck, *Int. Law* (1908), I, 516 *et seq.* G. G. W.

EMBARGO ACT. The United States laid an embargo, in 1794 as John Adams says, "as a

temporary measure to preserve our seamen and property, but not with any expectation that it would influence England." President Jefferson, December 18, 1807, in a message commenting on the state of commercial affairs remarked that Congress "will doubtless perceive all the advantages which may be expected from an inhibition of the departure of our vessels from the ports of the United States." Accordingly Congress, December 22, 1807, passed an Embargo Act detaining all vessels in port except those under public commission and those loaded or about to sail in ballast. This act almost destroyed American commerce without affecting seriously either France or Great Britain. A supplementary embargo act of January 8, 1808, required coast vessels to give bonds to reland cargoes in the United States; another, of March 12, put all transportation under embargo; and that of April 25, forbade all coasting trade to foreign vessels and restricted the use of domestic vessels. Opposition to the embargo was so bitter as to lead to the threatened secession of New England and to much opposition elsewhere. The embargo was repealed by the passage of the so-called non-intercourse act of March 1, 1808. See MILAN DECREE; NEUTRAL TRADE; ORDERS IN COUNCIL. **References:** H. W. Halleck, *Int. Law*, (1908), I, 516 *et seq.;* H. Adams, *Hist. of the U. S.* (1891), 168, *et seq.;* E. Channing, *Jeffersonian System* (1906), 211 *et seq.* G. G. W.

EMIGRATION FROM THE UNITED STATES. Most of the emigrants from the United States are from the ranks of those who came to the country within the preceding five years. In 1911, 500,000 aliens left our ports, as against 1,000,000 who arrived. When they came here, most of these departing emigrants probably intended to return to their native land. At the time many others doubtless returned because they failed to find here the opportunities they expected. The aged, the maimed by industrial accidents and the unemployed return in very large numbers. Every industrial depression has witnessed a great increase in the emigration from the United States. Still, at least one-fourth of all the emigrants who return to their native lands subsequently come back to the United States, generally with the families whom they had previously left behind.

Another stream of emigration from the United States has, since about 1900, been directed into Canada. In 1910, 100,000 persons emigrated to Canada of whom Minnesota and the Dakotas furnished almost one-half; four-fifths of these were farmers or farm laborers. This stream of emigration represents that movement for the occupation of cheaper lands further west, which has been going on since colonial times. It is stimulated by the activity of the Canadian Government in advertising the Canadian northwest throughout our northern agricultural states, and in giving every possible assistance to farmers to emigrate thither. See BRITISH AMERICA, DIPLOMATIC RELATIONS WITH; IMMIGRATION; PRIVILEGES AND IMMUNITIES OF CITIZENS; WEST AS A FACTOR IN GOVERNMENT. **References:** "Immigration Situation in Canada" in U. S. Immigration Commission, *Report*, 1910, ch. ii, *Floating Immigrant Labor Supply in ibid,* 1912. J. R. C.

EMINENT DOMAIN

Definition.—Among the powers inherent in a sovereign government is the power to take private property without the consent of the owner and appropriate it to a public use, called the right of eminent domain, which may be exercised by state governments without express constitutional grant and by the Federal Government as an implied power when it is a necessary and proper means for exercising the powers delegated to it. It is to be distinguished from the police power (*see*) which involves the right to restrict the use of private property or to destroy it when the public welfare may require such restriction or destruction, but does not involve the appropriation and use for the public welfare. It is distinguished also from the power of taxation (*see*), which involves enforced contributions for the support of the government or other public purposes but not the taking of specific property save as an incidental means of compelling the contribution required. It is further distinguished from the inherent sovereign power to destroy or provide for the destruction of property for the public safety in cases of emergency or overruling necessity; and from the right to destroy private property in military operations and to confiscate property found within the enemy's territory in case of war. But the right to seize and appropriate the private property of subjects for military purposes involves the power of eminent domain and should be exercised only with the assumed duty to make compensation, although the methods provided for making compensation in ordinary cases of appropriation are not directly applicable.

Constitutional Limitations.—The inherent power of eminent domain is recognized by a limitation found in state constitutions and in the Fifth Amendment to the Federal Constitution to the effect that private property shall not be taken for public use without just compensation. Such a limitation is recognized by all constitutional governments as a proper

and necessary restriction in the nature of a definition of the power itself, and it is enumerated in bills of rights in written constitutions with other generally recognized restrictions on the powers of the governments provided for in such constitutions. Without express limitation the taking of property for a public use without compensation would no doubt be held to be unauthorized and in violation of the constitutional provision as to due process of law (*see*).

The Taking.—The usual constitutional prohibition relates to the taking and appropriation of property and not to the causing of damage or injury to property or an interference with its use by the owner. But in some state constitutions the terms of the limitation are broad enough to require compensation for damage to as well as for appropriation of property for public uses or purposes. Regardless of the form of the constitutional limitation the legislative power in providing for the exercise of the right may require compensation to be made for damages as well as for the specific property taken.

What Property.—The power may be exercised as to property and property rights of every kind including real property and easements or interests therein, personal property, corporate privileges and franchises and individual privileges granted by legislation; the requirement of just compensation being applicable in all cases. It seems that money may not be appropriated as the requirement of compensation would render such appropriation nugatory.

General statutory provisions for the exercise of the power of eminent domain are not to be construed as authorizing the appropriation to another public use of property which has already been appropriated by condemnation to a public use recognized by statute. But the legislature may, so far as the public is concerned, authorize another public use of property which it has already appropriated; and it may require that private corporations which have acquired property for public use shall submit to another public use being imposed on the property which they have thus acquired. When the property or franchises of a corporation are taken for a public use, compensation must be provided for. If an additional burden is imposed on property already appropriated, the original owner or those representing him, if any residuary right remains to him in the property, must have new compensation for the additional burden. Thus in the case of public highways, the owner, from whose land the right of way has been taken, is usually regarded as retaining the title subject to the right of way in the public and if another use of the highway is authorized, as for instance for a railway, additional compensation must be made for the additional burden imposed.

A state cannot, of course, authorize the taking for public uses of property which has already been appropriated by the Federal Government to a public use. As to whether the Federal Government could exercise the power of eminent domain over property already appropriated by a state to public use, there might be serious doubt, for by such appropriation the Federal Government might interfere with the performance by a state government of its proper functions. Perhaps this is a question of policy rather than one of power.

In exercising the implied power of eminent domain the Federal Government is not, however, restricted by the provision that it can exercise exclusive legislation over all places purchased by the consent of the state legislatures for the erection of forts, arsenals, dock yards, and other needful buildings (Const., Art. I, Sec. viii, ¶ 17) (*see* TERRITORIAL JURISDICTION OF THE UNITED STATES WITHIN THE STATES). This provision relates only to the acquisition of territory within state limits over which the Federal Government is to exercise jurisdiction to the exclusion of the jurisdiction of the state. The Federal Government may authorize the appropriation of private property within the state limits for such public uses as that Government within its implied powers may create or declare, the property thus appropriated remaining, however, within the general jurisdiction of the state unless by its consent such jurisdiction has been relinquished.

For Public Use.—The purposes for which private property may be appropriated under legislative authority without the owner's consent are so various that they must be described by illustration rather than limited by definition. The state in its sovereign capacity may appropriate lands to be used as sites for public buildings or in the making of internal improvements under its direct authority; and it may take and hold lands which it devotes to the general use of the public as for highways and parks and for purposes of navigation and drainage. It may also authorize quasi-corporations, such as counties and townships, to appropriate lands to be used for the proper purposes of such divisions of government, as for court houses, public squares and like purposes. It may authorize municipal corporations to appropriate lands for streets, parks and public buildings, or in carrying out any proper municipal enterprises such as the establishment of waterworks, electric light and power plants, telephone lines, and street car systems, so far as such enterprises may be owned and controlled by such corporations (*see* CORPORATION, PUBLIC; PUBLIC USE).

The state may also authorize private corporations to exercise the power of eminent domain in acquiring property for public uses. Thus railroad companies are authorized to condemn private property on which to construct their lines of road and necessary buildings to enable them to carry on their public business as carriers; telegraph and telephone companies

may be authorized to construct their lines not only along the public highways but also across private property; canals, dikes, and levees may be authorized to be constructed through or upon private property for the furtherance of public purposes of navigation, drainage, or irrigation; and public service corporations in cities may be authorized to use not only the public streets but to condemn for their use, so far as necessary, property which is privately owned. No doubt private individuals may be authorized to exercise the power of eminent domain for the acquisition of private property to be used for a public purpose, but such power is not usually conferred by statute upon individuals. The purposes for which private corporations or persons may thus take property must be public in such sense that they are under the control of the state in the furtherance of the public welfare. Such appropriation cannot be authorized for private enterprises although the public may in general derive some indirect or incidental benefit from their promotion. The right to take and hold property for such purposes under the power of eminent domain is limited to the ownership and use of such property only for the public purpose for which it is taken.

The distinction which the usual constitutional limitation implies is between a public use and a private use, and such a limitation constitutes in effect a prohibition upon the taking of private property without the owner's consent in order that it may be appropriated to a private use. So it is held that private property cannot be taken for a private way or a private drainage system, even though it may be advantageous to several private owners. The purpose must be one involving, at least to some extent, the public necessity, convenience or welfare. Somewhat anomalous are the cases of appropriation of private property for dams, irrigation plants, mill sites and ways to mines and quarries. But while these uses are for private profit they are held to justify an appropriation of private property in order to make available for public benefit water power, water supply, and the natural resources of the country.

Compensation Required.—As the taking of private property for public use involves an undue and unequal burden to the owner for the public benefit, compensation is an essential condition of its exercise, and this the constitutional provisions almost uniformly require. If the appropriation is by the state or by a public or quasi-corporation exercising authority as a branch or department of the state government, it is sufficient that adequate provision is made for the payment of compensation to be assessed by some impartial tribunal; but if the appropriation is by a private corporation the making of compensation to be thus fixed is a condition precedent to the taking of the property and before the right of appropriation can be exercised the compensation must be paid or adequately secured. In the assessment of the compensation to be paid by a private corporation the legislature may provide that damages other than those involved in the taking of the property itself, so far as they are incidental to such taking, shall be paid; and it may be provided that benefits accruing to the owner from the taking of his property for public use shall be offset against the value of the property taken, although such offsetting of benefits may on the other hand be prohibited. But, in general, the owner cannot be subjected to the offset of benefits which he shall enjoy from the public use with other members of the general public, such as the increase in value of other lands which will result from the public improvement or the advantages of better transportation facilities.

Procedure.—As the exercise of the power of eminent domain is an attribute of sovereignty, the purposes and proceedings can only be such as authorized by legislation. The question whether the purpose or use provided for is public in such sense as to justify the taking of private property therefor is a judicial question which may be passed upon by the courts like any other question involving the nature and extent of legislative authority and the express or implied limitations thereon found in the constitutions. The question whether the procedure provided is such as is necessary under the general requirement of due process of law is also judicial; but due process of law is sufficiently regarded if some impartial tribunal, such as a board of commissioners or other body properly constituted, is provided for to assess the amount of just compensation to be paid, with a right of appeal to the courts for the purpose of securing a judicial review of the action of such board or tribunal. But if the purpose or use is public and the method provided for determining the compensation to be paid is adequate, then the necessity or propriety of the taking for such use and in such method is purely legislative, to be determined in accordance with considerations of public benefit.

See Franchises, Corporation, Legal Aspects of; Police Power; Public Works, National, State, and Municipal; Railroads, Public Aid to.

References: T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 752–828; J. B. Thayer, *Cases on Constitutional Law* (1895), I, 945–955; John Lewis, *Law of Eminent Domain* (3d ed., 1909). Important cases relating to exercise of the power of eminent domain by the Federal Government; Kohl *vs.* United States (1875), 91 *U. S.* 367; United States *vs.* Jones (1883), 109 *U. S.* 513; Cherokee Nation *vs.* Kansas R. Co. (1890), 135 *U. S.* 641; United States *vs.* Gettysburg Electric Railway Co. (1896), 160 *U. S.* 668.

Emlin McClain.

EMOLUMENTS OF PUBLIC OFFICERS. Under the term emoluments are comprised salaries, fees, allowances, perquisites, and all profits of every description which are attached to the possession of a public office. Whoever has a right to an office has a right to the emoluments thereof. While the direct financial compensation which an officer receives in the form of a salary or fees is the chief emolument, there may be others of great value. Thus the President of the United States has an official residence and Congress makes a special appropriation for his travelling expenses. Several of the state executives have official residences. Members of Congress receive special allowances for mileage and for stationery. Judges quite generally receive allowances for travelling expenses while on circuit. Retiring allowances payable to an office holder under certain specified conditions are part of the emoluments of the office. A sheriff's right to board the prisoners in his custody is one of his emoluments. Indirect compensation in the form of special perquisites in addition to the official salary or fees are not so common in the United States as in other countries, perhaps because of the fact that in this country official service of every description is almost always paid. See FEES AND FEE SYSTEM; MILEAGE OF LEGISLATORS; PENSIONS; RETIREMENT OF JUDGES; RETIREMENT OF MILITARY AND NAVAL OFFICERS; SALARIES OF PUBLIC OFFICIALS.

L. B. E.

EMPLOYEES, ACCIDENTS TO. See INDUSTRIAL INJURIES.

EMPLOYEES OF GOVERNMENT. Employees of government are those persons in the public service who, while performing duties which may often be described as public, have not been vested with any of the sovereign functions of government. Herein lies the fundamental distinction between an employee and an officer. An employment may be created by law, but it is usually the result of a contract the terms of which may not be altered without the consent of both parties. An office on the other hand is never created by contract. The duties of an employee may be of a strictly personal nature which can only be discharged by the person who made the contract, or they may be such as constitute a claim on the employee's estate and may be devolved upon his representative (Brown *vs.* Turner, 70 *N. C.* 93). The duties of an employee may be of a menial character, as those of a scrubwoman or messenger boy, or they may be of the highest dignity and importance, as those of counsel for the government before an international tribunal. Whether a particular position should be regarded as an office or an employment is often difficult to determine, and it may depend upon the wording of particular statutes. Compare U. S. *vs.* Mouat, 124 *U. S.* 303 and U. S. *vs.* Hendee, 124 *U. S.* 309, in which the court held that the same position is an office for one purpose and an employment for another. An office and an employment may be held by the same person, *e. g.*, a member of Congress may act as counsel for the Government.

The duties of most employees are fixed by law or by the terms of their contract or are controlled by the directions of a superior. Since they are largely of a mechanical or clerical nature, the selection of employees should be based entirely upon fitness and without reference to political opinions. Since the establishment of the Civil Service Commission in 1883, a larger and larger number of employees have annually been given the protection of the "classified service," appointment to which is based upon examination, and removal from which may only be for cause. On June 30, 1910, there were about 400,000 persons in the civil service of the Federal Government, at least nine-tenths of whom were employees. About the same proportion obtains in the vast army in the service of the state and municipal governments.

See INFERIOR OFFICERS; OFFICE; PUBLIC OFFICERS.

References: F. R. Mechem, *Law of Public Offices and Officers* (1890), 3–8; F. J. Goodnow, *Comparative Administrative Law* (1893), II, 2–5; B. Wyman, *Principles of Administrative Law Governing Public Officers* (1903), 159–162; U. S. *vs.* Maurice, 2 *Brockenbrough* 96 (1823); *Comptroller's Decisions*, IV, 696 (1898); Olmstead *vs.* Mayor, etc., of New York, 43 *N. Y. Sup. Ct. Rep.* 481 (1877); U. S. *vs.* Hartwell, 6 *Wallace* 385 (1867); U. S. *vs.* Germaine, 99 *U. S.* 508 (1878); Opinion of the Judges, 3 *Greenleaf* (Me.) 481.

LAWRENCE B. EVANS.

EMPLOYERS' ASSOCIATIONS. Employers' associations are organizations of employers of labor whose chief function is to unify the conduct of employers towards employees. Developments parallel to those which took place in the trade union movement have taken place among employers' associations, though at a much slower pace. Local associations were first organized, followed by a movement of federation of allied industries. Many of the local organizations are weak while the national associations are very strong, and with but few exceptions are openly hostile to the trade union movement. Some national associations have permanent strike committees and large defense funds, are engaged in procuring non-unionists to take the places of strikers, conduct legal actions against striking unions, exert their influence against labor bills before state legislatures, and in some cases compensate employers for losses sustained in strikes. See BUSINESS, GOVERNMENT RESTRICTION OF; LABOR ORGANIZATIONS; OPEN AND CLOSED SHOP; STRIKES. References: "Nat'l Trades Assoc." in *Mass.*

Labor Bulletin, No. 30, March, 1904, 49–61; N. P. Gilman, "Combination of Employees," "Employers' Assns." in *Methods of Industrial Peace* (1904), 47–61, 421–429; R. S. Baker, "Organized Capital Challenges to Organized Labor" in *McClure's*, XXIII (July, 1904), 279–292; G. E. Barnett, "Nat'l and District System of Collective Bargaining" in *U. S. Quart. Journal of Economics*, XXVI (May, 1912), 425–443; W. F. Willoughby, "Employers' Ass'ns in the U. S." in *ibid*, XX (Nov., 1905), 110–150; C. W. Elliot, "Trades Unions and Employers' Ass'ns" in *Engineering Mag.*, XXVII (April, 1904); 106–108; F. W. Hilbert, "Employers' Assns. in the U. S." in *Studies in Am. Trade Unionism* (G. E. Barnett and J. H. Hollander, Eds., 1906), 183–217; T. S. Adams and H. L. Sumner, "Employers' Assns." in *Labor Problems* (1905), 279–285. C. F. G.

EMPLOYERS' LIABILITY. In many states, employees who may become injured in the course of their employment can recover damages from their employers only where the jury find that the employer was negligent and that negligence caused the accident. For injury caused by the obvious risks of the occupation and for those accidents that are inevitable or for which blame cannot be fixed, the employer is not liable This principle of American law, inherited from the common law of England, has been discarded by nearly every other civilized country in the world. The general principles of the American system of liability are as follows:

Responsibility of the Employer.—The so-called absolute duties of the employer to furnish a reasonably safe place to work, reasonably competent employees, and instructions when they are reasonably necessary; while on the side of the employee rests the burden of proof in showing that in a given instance the master has failed to fulfil one of these duties.

Defenses Available.—The following defenses may hasten up the master in such an action: (1) assumption of risk—that the injury which the plaintiff suffered belonged in the class of risks which he assumed, namely, that it was caused by an ordinary danger of such work, or by a danger which the plaintiff knew about, or should have known about, and that he continued working in spite of it; (2) the fellow-servant doctrine—that the negligence resulting in the employee's injury was not a failure on the employer's part, but on the part of a fellow-servant of the plaintiff, and, therefore, that he, the employer, is not liable since this, too, was a risk assumed by the employee; (3) contributory negligence—that the injury was caused in part by the plaintiff's failure to use reasonable care himself and that neglect has contributed to his injury.

Difficulties in Administration.—In the actual working out of the American system: (1) the rule in regard to setting aside a written contract, as applied to the releases in master and servant cases (while theoretically logical and consistent), considering the actual relative situation of the two parties, clearly protects the strong against the weak; (2) there is an unavoidable delay in bringing the case to trial, and that while this delay means poverty and anxiety to the employee, it means but a mere postponement of annoyance to the employer; (3) it is usually to the economic interest of the witnesses necessary to prove the plaintiff's case, to stand by the defendant, their employer.

Present Status.—During the past few years several states have enacted statutory provisions departing considerably from the rules set forth in the foregoing epitome. These new enactments must be studied in connection with the compensation laws now being passed in many states, since many of these compensation statutes not only substitute the liability for compensation in the place of the tort liability under certain conditions, but also, under other conditions radically amend the employer's pre-existing liability in tort.

See Accidents, Railroad and Steamship; Business, Government Restriction of; Contract, Impairment of; Dangerous Callings; Examinations for Employment and Professions; Labor, Freedom of; Labor, Principles of; Labor, Protection to; Labor, Relation of the State to; Mine Legislation for Laborers; Social Reform Problems; Workmen's Compensation.

References: *Am. Labor Legislation Review*, I (1911), Nos. 2, 4; L. D. Clark, *Law of the Employment of Labor* (1911), 124–186, 187–204, "Legal Liability of Employers for Injuries to their Employees in the U. S.," in U. S. Bureau of Labor, *Bulletin*, No. 74 (1908), 1–120; Nat. Conf. on Compensation for Industrial Accidents, *Reports* (1909–1910); N. Y. State Commission on Employers' Liability, *Report*, 1910; Reports of various State Commissions (1910–1912); J. T. Moll, *Independent Contractors and Employers' Liability* (1910); *Am. Year Book, 1911*, 369, 372, and year by year; H. H. B. Meyer, Comp., *Select List of References on Employers' Liability and Workmen's Compensation* (1911); "Risks in Industry" in Am. Acad. of Pol. and Soc. Sci., *Annals*, XXXVIII (1911), I; Nat. Civic Federation, *Proceedings*, 1909; C. Eastman, *Work—Accidents and the Law* (1910).

Charles F. Gettemy.

EMPLOYMENT AGENCIES. Varieties.—Six types of employment agencies may be noted: (1) those maintained by trade unions; (2) those established by workmen irrespective of any trade; (3) those established by employers; (4) those maintained as philanthropic enterprises; (5) the regular commercial employment bureau; (6) those maintained by the state or municipality. We shall consider here

only governmental agencies, and commercial agencies regulated by law.

Forms of Regulation.—The evils of the private bureau led to legal regulation of various kinds: (1) prohibiting the collection of a fee prior to giving applicant information of a situation actually open to him; (2) requiring pompt return of the fee to the payer, whenever the position for which payment was made is, through no fault of applicant, not open to him as understood when fee was paid; (3) placing all employment agencies under supervision of some state bureau. (4) Some employment bureaus are regulated by city ordinance requiring license fees or bonds of prescribed amounts and limiting the registration fees to definite amounts, with return of fee provided a position is not secured within a prescribed time.

Public Officers.—Dissatisfaction with unregulated private agencies has led to free public employment offices beginning with Ohio in 1890. According to the latest available statistics (1911), 19 states have public employment offices in 58 different cities, usually supervised by the commissioner of labor, the chief of the bureau of statistics, or a superintendent of free employment offices. In every case the office force is appointive; and in four, civil service rules apply. About 300,000 places are found annually for wage-earners by public employment offices, at a cost varing from four cents for unskilled workers in Seattle to $2.00 and upward in some small offices.

Illinois appropriates annually over $40,000 for the maintenance of six offices; Massachusetts, $20,000 for three offices. In three or four states, the law stipulates that not more than $10,000 shall be appropriated, and in six states the expenses of free employment offices are met from the appropriation for conduct of the bureaus of labor.

The U. S. Bureau of Labor *Bulletin* (Jan., 1907) reports that unskilled labor is ill distributed by private agencies; but that "the free public employment office must be regarded thus far as an experiment with some failures, many mistakes, and several successes to be recorded as its briefest summary." The commissioner considers the private employment offices as expensive but as frequently able to render a higher grade of service than the public offices.

Foreign Systems.—Germany has undoubtedly the best public employment bureaus. Ordinary commercial bureaus in Germany are mainly confined to placing domestic servants. Trade unions have bureaus of their own. But the characteristic employment bureau is public. The one in Berlin is conducted by various united societies but receives a subsidy from the municipality and is under strict supervision. It is free to all employees. Workmen who register pay a nominal fee. Employer and employee have equal representation in the management, and the heads of the committees are selected from among the foremost citizens of the municipality.

In Bavaria, the communes are responsible by law for employment bureaus; and the separate municipal bureaus are federated into a complete system in which there are central employment bureaus in the largest Bavarian cities. No fees are charged, the entire cost being defrayed by the municipality, assisted by grants from the Bavarian Government. England has started a federated system of labor exchanges especially for unskilled labor, working in close harmony with trade union bureaus for skilled labor.

See LABOR, RELATION OF THE STATE TO; LABOR, WOMEN'S; UNEMPLOYMENT; WAGES, REGULATION OF.

References: M. Moses, "The Regulation of Employment Agencies" in *Labor Laws and their Enforcement* by Persons, Parton, Moses, *et al.* (1911); E. T. Devine, *Report on the Desirability of an Employment Bureau in the City of New York* (1909); W. F. Willoughby, *Employment Bureaus in the U. S.* (1900).

F. D. WATSON.

ENABLING ACT. See STATES, ADMISSION OF.

ENFORCEMENT. The general power to compel obedience to law is incidental to sovereignty and is exercised in a variety of ways, expressly and incidentally, by the different deparments of government, both state and federal, each within its appropriate sphere. But by each of the last three amendments to the Federal Constitution, Congress is expressly authorized to enforce the provisions of such article by appropriate legislation, and it is only with reference to the powers of Congress to legislate in pursuance of the authority thus given that specific questions relating to the enforcement of law have arisen.

Each of these articles contains specific prohibitions and is therefore self executing. The Thirteenth Amendment renders void any federal or state legislation perpetuating or recognizing the lawful existence of slavery or involuntary servitude (*see* SERVITUDE, INVOLUNTARY). The Fifteenth Amendment renders void any federal or state legislation denying or abridging the elective franchise on account of race, color, or previous condition of servitude. And the Fourteenth Amendment prohibits the making or enforcement by any state of any law abridging the privileges or immunities of citizens of the United States or depriving any person of life, liberty or property without due process of law or denying to any person within its jurisdiction the equal protection of the law, thus rendering invalid any state legislation falling within the scope of such prohibition (*see* FOURTEENTH AMENDMENT).

Under the enforcement clauses of these amendments Congress may legislate in order to

render more efficient the prohibitions announced. It was not the purpose of these amendments, however, to give to Congress the general power to legislate on the subject matter involved further than to make effectual the prohibitions declared. Thus under the Thirteenth Amendment, Congress was not given authority to enact general legislation with regard to the ordinary civil rights of those who had been in a condition of servitude; nor under the Fourteenth Amendment to provide for the punishment of individuals who should interfere with the exercise of the privileges or immunities therein guaranteed. The province and scope of the two amendments "are different; the former simply abolished slavery; the latter prohibited the states from abridging the privileges or immunities of citizens of the United States; from depriving them of life, liberty, or property without due process of law, and from denying to any the equal protection of the laws. . . . What Congress has power to do under one, it may not have power to do under the other. Under the Thirteenth Amendment, it has only to do with slavery and its incidents. Under the Fourteenth Amendment, it has power to counteract and render nugatory all state laws and proceedings which have the effect to abridge" its guaranties. "Under the Thirteenth Amendment the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by state legislation or not; under the Fourteenth Amendment . . . it must necessarily be, and can only be, corrective in its character, addressed to counteract and afford relief against state regulations or proceedings" (Civil Rights Cases).

It has, therefore, been held that conspiracies to deprive citizens of the free exercise and enjoyment in general of their rights and privileges under the Constitution or laws of the United States or the denial by individuals to others of their civil rights and the equal enjoyment of such rights were not acts which Congress could regulate or punish under the enforcement clauses of the amendments. The Fourteenth Amendment does not confer upon Congress the general power to legislate in respect to the subject matter as to which specific state legislation or state action of a particular character is prohibited.

See COERCION; PEONAGE; amendments to the Constitution by name.

References: As to the validity of the Civil Rights Act passed by Congress in 1866, and reenacted with some modifications in the Enforcement Act of 1870, *see* United States *vs.* Cruikshank (1875), 92 *U. S.* 542, and Civil Rights Cases (1883), 109 *U. S.* 3; as to federal legislation against peonage, see references to article THIRTEENTH AMENDMENT.

EMLIN MCCLAIN.

ENGINEER CORPS. The Engineer Corps of the United States Army is charged with all engineering work in connection with the construction and maintenance of military posts and fortifications. It also does the necessary engineering in connection with the improvement of rivers and harbors. See WAR, DEPARTMENT OF; POSTS, MILITARY; RIVER AND HARBOR BILLS. References: Secretary of War, *Annual Report;* J. A. Fairlie, *National Administration of the U. S.* (1905), 145; C. H. Van Tyne and W. G. Leland, *Guide to the Archives* (2d ed., 1907), 125–128. A. N. H.

ENGRAVING AND PRINTING, BUREAU OF. The Bureau of Engraving and Printing is one of the bureaus of the United States Treasury Department. It maintains a great factory at Washington for the manufacture of paper money, bonds, postage stamps and internal revenue stamps. See TREASURY DEPARTMENT. References: Secretary of the Treasury, *Annual Report;* J. A. Fairlie, *National Administration of the U. S.* (1905), 131. A. N. H.

ENLISTMENT, NAVAL AND MILITARY. Conditions.—Enlistment is a contract to assume the status of a soldier or sailor, and it becomes valid as soon as the recruit accepts pay or uniform. But he is also required to sign articles and take an oath of allegiance before entering the service. Deserters and criminals may not be enlisted in the Army or Navy of the United States; and it is a violation of law to accept an insane or intoxicated person. Minors under 16 cannot become recruits; those under 18 must have the consent of parents or guardians; but beyond that age enlistments are valid, though it was urged in 1812 that this deprived parents and masters of "the only real property in the labor of others in the Northern States." The present term of enlistment for the Navy and Marine Corps is four and five years respectively; but since 1912, men enlist in the Army for seven years, four of which are to be spent with the colors and three in the reserves. Short terms have demoralized the volunteer forces in all the American wars; Washington complained of the "fatal policy" which gave him "two sets of men to pay, the discharged men going home, and the levies coming in;" and some of the three months men of 1861 were seen "moving to the rear to the sound of the enemy's cannon" because their time was out on the eve of the battle of Bull Run. Though the military age extends to 45, recruits over 35 are not admitted to the Army; and the Navy takes none over 25 unless they are seamen or mechanics. Reënlistment after honorable discharge is encouraged by extra pay; and deserving seamen are allowed to serve as long as they are fit for active duty. American citizenship and acquaintance with English are among the requirements, though they may be waived for volunteers during war.

ENLISTMENTS, DISCHARGES, AND DESERTIONS IN THE ARMY, NAVY, AND MARINE CORPS, 1912

	Enlisted Strength	Applicants for enlistment	Accepted Recruits	Reënlistments	Discharged		Deserted	
					Total	By Purchase	Total	Per Cent
Army	73,023	50,534	38,903	19,326	28,667	2,475	3,411	3
Navy	47,515	79,458	15,724	3,849	16,023	403	2,278	3.52
Marine	9,367	49,999	3,879	892	2,940	----	917	6.7

Recruiting.—Recruiters visit most cities and towns in the United States, and posters and other forms of advertising set forth the advantages offered by the Army or Navy; but the sight of flags and uniforms appears to be more effective in attracting recruits. It is shown that the food and clothing are superior to those of the working class in general, and that the recruit who begins at $16 per month can save money during his term of enlistment, especially if he qualifies for advancement as a non-commissioned or petty officer. The Army promotes officers to the grade of second lieutenant from the ranks; and similar advancement may occur in the Navy after service as a warrant officer. But it is not found desirable to rely upon such attractions to fill the ranks, since veterans rather than recruits are worthy of promotion. In general, only about 25 per cent of applicants for enlistment are accepted.

See Army, Standing; Bounties to Soldiers and Sailors; Conscription and Draft; Military and Naval Expenditures; Military Law; Militia; Officers, Military and Naval Reserves; Soldiers and Sailors, Legal Status of; Volunteer.

References: G. Washington, *Writings* (ed. by W. C. Ford, 1889), VIII, 395, 476; L. C. Hatch, *Administration of the Am. Revolutionary Army* (1904), 12, 72, 126; E. Upton, *Military Policy of the U. S.* (1907), 6, 11, 14, 20, 34, 53, 67, 137, 203, 243–246; J. Quincy, *Life of Josiah Quincy* (1868), 274; W. Pulsifer, *Navy Yearbook*, 1912, 807–809; U. S. War Department, *Military Laws* (1908), ch. xxix; *Annual Reports, 1899–1903* (1904), 146, 245, 326, *ibid* (1910), I, 13, 167–199, 237; *Official Records* (1880–1901), Series I, II, 325, Series III, V, 835; U. S. Navy Department, *Annual Reports*, 1910, 153, 304–317, *Laws Relating to the Navy* (1898), 123–128, 416–417, 484, *Navy Regulations* (1909), ch. xvii, 251, 270; H. E. Cloke, *Enlisted Specialists' Examiner* (1908).

C. G. Calkins.

ENROLLMENT OF BILLS. See Bills, Course of.

ENTANGLING ALLIANCES. These words were used by Jefferson in his inaugural address of March 4, 1801, as part of the following maxim of foreign policy: "Peace, commerce, and honest friendship with all nations, entangling alliances with none." This states in concise form the recommendations of Washington's Farewell Address. The fear of entangling alliances, based upon the experience of the United States under the French Treaty of Alliance of 1778, has always exerted a strong influence upon the foreign engagements of the United States, so that it may be called a cardinal doctrine of its foreign policy. In 1823 the United States preferred to set forth its policy toward the newly recognized states of America without specifically coöperating with Great Britain and thereby limiting its actions in the future. The Clayton-Bulwer Treaty of 1850 was, until its abrogation in 1901, often regarded as an entangling alliance with Great Britain. The precept of Washington, though never made a law, and, like the Monroe Doctrine, a policy which has received a variety of interpretations, is sustained to-day by such popular assent that its abandonment would doubtless be regarded with extreme disapproval. See Asia, Diplomatic Relations with; Clayton-Bulwer Treaty; Isolation; Japan, Diplomatic Relations with; Kongo Free State; Monroe Doctrine. **Reference:** J. D. Richardson, *Messages and Papers* (1896), I, 222–3, 323.

J. S. R.

ENTOMOLOGY, BUREAU OF. The Bureau of Entomology is one of the bureaus of the Department of Agriculture (*see*). Its work is divided into sections dealing respectively with the gipsy and brown-tail moth, the importation of useful insects, the investigation of insects injurious to southern field crops, (particularly the cotton boll weevil), of insects injurious to forests, of those injurious to deciduous fruit trees, of those which prey upon cereal crops and forage plants, of those which injure vegetable crops, of those affecting citrus fruits, and of those which destroy stored foods, as well as investigations of insects in their direct relation to the health of man and domestic animals, and the study of bee culture. See Agriculture Relations of Government to; Animal Industry, Bureau of. **Reference:** Department of Agriculture, *Annual Reports.*

A. N. H.

ENVOY EXTRAORDINARY. To this term is usually joined that of minister plenipoteniary to designate diplomatic agents of the second grade. This was the highest grade sent by the United States before 1893 though the expediency of sending ambassadors had often been the subject of debate. The duties of envoys extraordinary are the same as those of ambassadors. The envoys do not have quite the

same prerogatives and are regarded as representing rather the state than the sovereign personally. Ambassadors take ceremonial precedence in public functions and envoys are regarded as on mission to a less important post or from a less important state. The envoy ranks in dignity above the minister resident and the chargé d'affaires. See DIPLOMACY AND DIPLOMATIC USAGE; DIPLOMATIC SERVICE OF THE UNITED STATES. G. G. W.

EPILEPTICS, PUBLIC CARE OF. No class of defectives makes a stronger claim upon the sympathies of the community than the epileptics. No disease is more obscure as to its causes, or more hopeless of cure, than epilepsy. As the disease progresses the mental and physical powers of the patient decay. The epileptic is debarred from many of the active pursuits of life. He cannot be a railroad man, a teamster, a house painter, carpenter or a salesman. He is exposed to danger from falls, and is an object of fear and aversion to his fellows. He lives under a perpetual fear, and he is a menace to his neighbors because no one can anticipate what he may do in his paroxysms. He ought not to marry because he is likely to transmit his affliction to his posterity. There is no specific for epilepsy; the only beneficial treatment consists in regulated diet, happy conditions, and congenial employment.

Institutional treatment is of vital importance to the epileptic, and is best secured in colonies like the New York colony for epileptics at Sonyea. The number of epileptics in the United States can only be guessed at but it probably exceeds 50,000. Thus far, provision has been made for only a fraction of the afflicted. The first state institution for epileptics was established at Gallipolis, Ohio, in 1890. Colonies for epileptics have since been established in nine other states, and auxiliary provision for epileptics in connection with the feeble-minded has been made in Wisconsin and Michigan. Many epileptic patients are found in almshouses and institutions for the insane and institutions for the feeble-minded, but a great part of the epileptics are neither insane nor feeble-minded. Their confinement in those institutions is a cruelty to the epileptics and to the proper inmates of those institutions as well. The state institutions now in existence are as follows:

Date	State	Institution	City	Year	No.
1890	Ohio	Ohio Hospital for Epileptics	Gallipolis	1909	1,456
1894	N. Y.	Craig Colony for Epileptics	Sonyea	1912	1,418
1895	Mass.	Monson State Hospital	Monson	1912	887
1895	N. J.	N. J. State Village for Epileptics	Skillman	1911	360
1895	Pa.	Pa. Epileptic Hospital and Colony Farm	Oakbourne	1911	76
1900	Texas	State Epileptic Colony	Abilene	1912	375
1903	Kansas	Kan. State Hospital for Epileptics	Parsons	1912	659
1905	Ind.	Ind. Village for Epileptics	Madison	1912	179
1908	Va.	Va. State Epileptic Colony	Lynchburg	1912	121
1909	Conn.	Conn. State Colony for Epileptics	Mansfield	1912	0

Public provision for the care of epileptics is necessary because the disease, while it does not prevent labor, bars the sufferer from many normal pursuits of life.

The following is a list of institutions for epileptics in the United States in the order of their establishment, from 1890 to 1913.

See DEFECTIVE CLASSES, PUBLIC CARE OF; DEFECTIVES, PUBLIC INSTITUTIONS FOR; FEEBLE MINDED, PUBLIC CARE OF; HEALTH, PUBLIC, REGULATION OF.

References: N. J. State Village for Epileptics, Skillman, *Annual Reports* (1895 to date); Pennsylvania Epileptic Hospital and Farm Colony, Oakbourne, *Annual Reports* (1896 to date); Ohio Hospital for Epileptics, Gallipolis, *Annual Reports* (1891 to date); Nat. Conf. of Char. and Correction, *Proceedings* (1874 to date); *Am. Year Book, 1910*, 472, *1911*, and year by year; Craig Colony for Epileptics, Sonyea, N. Y., *Annual Reports* (1895 to date); Massachusetts Hospital for Epileptics, Monson, *Annual Reports* (1896 to date).

HASTINGS H. HART.

E PLURIBUS UNUM. A Latin phrase (out of many, one) selected as the motto of the United States. It probably originated from the design for the great seal of the United States submitted August, 1776, by Franklin, Jefferson and John Adams. At various times it has been placed on coins by the Treasury officials. O. C. H.

EQUAL RIGHTS PARTY. The Equal Rights party was one of the many factions of New York democracy. Its career was from about 1835 to 1837. After the defeat of the bill to recharter the United States bank, state banks grew up, with special privileges granted them. It was in opposition to these special privileges that the Equal Rights party was formed. On the evening of October 29, 1835, at a meeting to pass upon candidates, the Tammany men tried to control, but seeing they were outnumbered, attempted to break up the meeting by turning out the gas. The Equal Rights men were prepared with candles and matches. They relighted the hall and carried out their object of meeting. From this time, the name "Loco-Foco" (*see*) was applied to them. A county convention was held in 1836, and a resolution opposing special privileges was adopted. State conventions were held at Utica both in 1836 and 1837. Candidates were nominated, but were not elected. Van Buren, by taking a stand in his message of 1837 against corporations and

special privileges, made it possible for the democracy to be united, with the objects of the Equal Rights men mainly accomplished. See DEMOCRATIC PARTY. References: J. A. Woodburn, *Pol. Parties and Party Problems* (1903), 138; E. Stanwood, *Hist. of the Presidency* (1898), 228. T. N. H.

EQUALITY BEFORE THE LAW. As a necessary incident of civil liberty the equality of all men before the law, that is in contemplation of law and with reference to the protection afforded by law, is assumed. The conception is embodied in Magna Charta which contains guaranties of liberties and equal privileges to all freemen. Concurrently with the Declaration of Independence in which equality of all men and their endowment with the unalienable rights of life, liberty and the pursuit of happiness were announced, bills of rights were adopted in several of the states announcing in various terms the same essential doctrine. Without specific announcement the equal enjoyment of rights with the correlative equal protection of the law is necessarily assumed in our constitutional system (*see* LIBERTY, LEGAL SIGNIFICANCE OF). The theoretical condition of equality before the law is recognized by the specific guaranty of the equal protection of the law given as against infringement by state authority in the Fourteenth Amendment (*see*), where it is immediately coupled with the guaranty of due process of law. Indeed, equal protection of the law is necessarily involved in due process of law so that it is guaranteed as against federal encroachment by the Fifth Amendment. Equality before the law and equal protection of the law are secured to all persons if courts are open to all on the same conditions with like rules of evidence and modes of procedure for the security of persons and property, the prevention and redress of injuries, and enforcement of contracts, and there is likewise equality of rights and burdens if no restrictions are imposed on one person as compared with others in the acquisition of property and enjoyment of personal liberty. It is a requirement of due process of law that the laws shall operate on all alike and shall not subject the individual to an arbitrary exercise of the powers of government.

The equal protection of the laws necessarily excludes arbitrary distinctions between individuals, invidious discriminations, and class legislation not founded on legal or reasonable grounds of distinction. But equality is not disregarded by laws which are adapted to meet particular conditions to which they are intended to apply. Laws must bear equally and alike upon those who occupy substantially the same condition but a reasonable classification as to subject matter is necessarily permitted and such classification is not inconsistent with the requirement of uniformity. Due process of law is secured if the laws operate alike on all who come within their general scope and do not subject the individual to merely arbitrary power. A law is uniform in its operations and therefore within the guaranty of equal protection if it embraces all persons who are or may come into like situation and circumstance. Without violating the rule of uniformity laws may be enacted which are confined in their operation for a suitable reason to particular localities or particular classes of persons distinguished by their callings or employments, but it is not proper by ostensible classification not founded on reason to discriminate in the imposition of restrictions upon persons or burdens upon property. Without violation of the rule of uniformity methods of taxation may be varied to meet particular conditions, exemptions from taxation may be provided for in particular classes of cases, the rules of procedure in courts may be adapted to the general end sought to be obtained and in the necessities of the case, special privileges may be granted to specified individuals which it is impossible that all should enjoy. The discrimination which is prohibited is an arbitrary discrimination not founded upon reasonable necessity, and the protection guaranteed is one of substance and weight rather than one of mere form.

See BILLS OF RIGHTS; CIVIL RIGHTS.

References: E. McClain, *Constitutional Law* (2d ed., 1910), 289–294; T. M. Cooley, *Principles of Constitutional Law* (3d ed., 1898), 247; J. R. Tucker, *Constitution of U. S.* (1899), II. 871; Barbier *vs.* Connolly, 113 *U. S.* 27. EMLIN McCLAIN.

EQUALITY OF STATES. See STATES, EQUALITY OF.

EQUALIZATION OF TAXES. See TAXES, EQUALIZATION OF.

EQUITY

Principles of Equity Jurisdiction.—It is difficult to state the rules of equity in any comprehensive way, as it is an integral part of our general jurisprudence, rather than a separable division. Equity consists of that body of principles which brings about the solution of a particular case in some way beyond the normal action of common law. Equity is thus commonly distinguished from law; but it should be noted that equity presupposes a system of rights and wrongs at law into which it interposes itself to the extent that it is felt neces-

sary to do in order to work out substantial justice in a particular case. The point should be emphasized that equity does that which it considers justice in accordance with principles which have long since become fixed by its own precedents. That these principles of equity are supplemental to those of the law, is shown by the fundamental policy of the courts of equity that they will not intervene in any case where there is an adequate remedy provided by the courts of law. It is the characteristic of equity that it deals with particular persons; equity acts *in personam*, not *in rem*. It gives orders to them to act in certain ways; and it modifies the situation as it would otherwise be at common law by ordering the persons before them not to take advantage of their position at common law. Thus, if a person has lost a bond, equity will not let the person who signed it take advantage of the legal doctrine that the right is thereby gone, but will require him to execute another. And, on the other hand, if a person got another to sign a bond by fraudulent representations, equity would enjoin him from enforcing the legal right which the possession of that bond would otherwise give him.

Origin.—To relieve thus against accident and mistake is often said to have been the original basis for equitable interference with legal process, but in reality the reasons for the rise of equity go deeper. In every fully developed jurisprudence there will be found principles of justice whereby the solution of a given case may be different from what it would have been by the rules of law, were it not for its particular facts. Such dispensation from the rigor of the law was part of the Roman system; but it is now agreed that English equity owes comparatively little to the civil law. The history of the rise of equity in English jurisprudence is plain enough. The Normans brought with them to England the peace of the king who, through his justices, enforced the law of the land upon all. But in hard cases petition was made to the king to relieve against the course of the law; and these petitions it became customary to intrust to the chancellor for action. It was all the law of the land, and it was all the justice of the king; but the two sides of jurisprudence, general rules and particular considerations, became differentiated. Thus in the Tudor period we find different tribunals; the law courts doing one work in one way; and chancery doing another in another way. It remained for the Stuarts to decide which side had the ultimate superiority; and this was settled by King James in holding that the equity might restrain the enforcement of a judgment already obtained at law. In the face of this long history, it will not do to say that the rise of equity was accidental. For a separate equity there was a special need in the development of English jurisprudence by reason of the peculiar limitations of the legal processes which the earlier Englishmen devised and established.

Concurrent Jurisdiction.—The common law provided only for redress of wrongs already perpetrated by the process of execution against the property of the wrong-doer (*see* DAMAGES). This was inadequate in two ways. In the first place, the law courts did not provide any way of preventing wrongs, however imminent they might be. But the equitable process of injunction against the person threatening the wrong, under penalty of condign punishment for contempt if he should disobey the injunction (*see*), covered this contingency. In the second place, legal process provided no method of specific reparation other than damages for a wrong, no matter how much the party wished to have the very thing done which he had a right to demand. But by ordering specific performance, equity could give an appropriate remedy in such a case. It will be noticed that in enjoining a threatened trespass, or in ordering a promised conveyance, in cases of these two sorts, equity would not go further than the law in recognizing rights, it would simply be providing new remedies. This is the so-called concurrent jurisdiction of equity which forms perhaps the largest part of its activity. And in this connection might also be noted its auxiliary work, such as getting discoveries made from persons being sued by compelling them to answer to interrogatories, and entertaining bills to perpetuate testimony.

Exclusive Jurisdiction.—Of almost equal importance is the exclusive jurisdiction of equity so called. For to a certain extent progress in the development of our jurisprudence has been made by the recognition by equity of obligations with which the law was not capable of dealing. Thus when lands were conveyed to one man to hold in trust for another, the law was obliged to say that title was in the person to whom it was deeded; and it could not find any place for any ownership for any one else. But equity was able to order the trustee to administer the property, which he thus held, according to the terms of the settlement. Again, if a man conveyed property to his creditor with the proviso that unless the debt should be repaid on a certain day the title should be absolute, the tender of the debt a day later could not affect the title. But equity could order the mortgagee to reconvey the property upon the payment of the debt at any time. In both instances the equity was worked out by the same doctrine. In good conscience a trustee ought to hand the income over to the beneficiary; and it was only right for the mortgagee to return the property pledged to the mortgagor, now that the borrowed money was forthcoming. Equity recognized that the legal title was in the grantee in both cases, but in both cases it gave him orders as to how he should deal with that legal title. At the

same time equity recognized certain rights for such fiduciaries. The trustee might reimburse himself out of the trust property for necessary expenditures; and the mortgagee might satisfy himself out of the pledged property by a reasonable foreclosure. The greater part of what may be called the substantial rules of equity have to do with this exclusive jurisdiction; but the various rules governing the course of equity in the concurrent jurisdiction are much of the same character. And it is accurate enough to say that equity, to the extent it may be considered separately, has to do with remedies rather than with wrongs.

See DAMAGES; INJUNCTION; JURISPRUDENCE; LAW, COMMON; LAW.

References: J. N. Pomeroy, *Equity Jurisprudence* (3d ed., 1905); J. Story, *Equity Jurisprudence* (13th ed., 1886); C. C. Langdell, *Equity Jurisdiction* (2d ed., 1908); F. W. Maitland, *Equity* (1909). BRUCE WYMAN.

ERA OF GOOD FEELING. A name commonly given to the period from the close of the War of 1812 to the election of John Quincy Adams. The expression appears first to have been used by the Boston *Sentinel* about the time of Monroe's trip through New England, 1817. Party rancor had largely died out; old issues had largely disappeared. The Federalists were considerably discredited by opposition during the war; and, on the other hand, the Republicans had in large measure taken over the principles of broad construction which the Federalists had first put forth. See DEMOCRATIC-REPUBLICAN PARTY; FEDERALIST PARTY. Reference: J. B. McMaster, *Hist of People of U. S.*, IV (1895), 380. A. C. McL.

ERIE CANAL. The Erie Canal was formally opened November 4, 1825. It had cost $7,602,000. Its length from Albany to Buffalo was 352 miles. As first constructed, the Erie Canal was only 40 feet wide and 4 feet deep; later, the dimensions were increased to 56 feet bottom width, 70 feet top breadth and 7 feet depth. The total elevation to overcome between Albany and Buffalo was 568 feet.

For fifty years, the Erie Canal was a traffic route of great importance. At the opening of the Civil War, the ton mileage of the canal traffic was more than double that of both the New York Central and the Erie railroads combined. After 1880, although tolls were abolished in 1882, there was a steady, though a very gradual decline of the Erie Canal traffic until 1904 when it was slightly less than 2,000,000 tons. Since 1900, the average annual tonnage has been about 2,100,000 tons. The canal traffic is now (1913) barely 4 per cent of that across the state by the railroads.

In 1896, New York State decided to increase the depth of the Erie Canal to 9 feet, and by referendum vote an expenditure of $9,000,000 was authorized for that purpose. This amount proved inadequate. Surveys were made in 1901, and it was estimated that the Erie, Oswego and Champlain canals could be increased to a depth of 12 feet at a cost of $101,000,000. Two years later, the voters of the state, by a large majority, authorized the issue of bonds to that amount. The work is in progress.

The new Erie, Oswego and Champlain canals will have a minimum bottom width of 75 feet in canal sections, and 200 feet in river sections. Locks will be 328 feet in length, 45 feet in width and 12 feet in depth. It is expected that barges 150 feet long, 42 feet wide, and 10 feet in draft, and having a capacity of 1,500 tons will be used and will be towed in fleets of three or four barges. Steam or electric towing will be employed and the trip from Buffalo to New York will be made in five days instead of ten days as at present.

To make provision for public intermediate and terminal harbors, the state of New York, in May, 1909, established the State Barge Canal Commission which has prepared plans for the construction by the state and municipalities of large terminals so located, as best to accommodate the traffic of the canal.

See CANALS AND OTHER ARTIFICIAL WATERWAYS; LAKES, JURISDICTION AND NAVIGATION OF; NATIONAL WATERWAYS COMMISSION; NEW YORK.

References: J. A. Fairlie, in *Quarterly Journal of Economics*, XIV (Feb., 1900), 212, XVIII (Feb., 1904), 286, Am. Acad. of Pol. and Soc. Science, *Annals*, XXXI (Jan., 1908) 117; Superintendent of Public Works of New York, *Annual Reports*.

EMORY R. JOHNSON.

ESCHEAT. In American law, the reversion of land to the state by reason of the want of any one competent to inherit, upon the former owner's death or incapacity to hold. Under the feudal system in England, escheat meant a determination of the existing tenure and a reversion to the original grantor or lord of the fee. H. M. B.

ESSEX JUNTO. An appellation first given about 1781, to a group of leaders connected with Essex County, Massachusetts, where business interests made a strong central government desirable; but more particularly applied to the coterie of extreme Federalist leaders—among whom were Cabot, Parsons, Ames, Pickering and Higginson, who during John Adams's administration supported Hamilton rather than the President, and later resisted the embargo. They were alleged to have considered secession in 1808, and to have designed the Hartford (*see*) convention in opposition to the War of 1812. See FEDERALIST PARTY.

O. C. H.

ESTIMATES, TREASURY. Under the federal law, the heads of departments are required

to prepare estimates and submit them to Congress at or about the beginning of the December session each year. Preparation must therefore begin several months in advance for estimates relating to appropriations which will begin to be paid out after July of the following year. The estimates are intended to be a basis for the appropriation bills; but are, in many respects, disregarded. A similar system prevails in city and state governments, and it is there much more effective, because the estimates are commonly prepared much nearer the period to which they apply, and are sure to come somewhere near the probable outgo. Estimates, of probable revenue are also made by the Secretary of the Treasury, but they are perturbed by incalculable variations in the proceeds of the tariff and internal revenue taxes. **See** Appropriations, American System of; Budgets, Federal; Budgets, State and Local; Cost of Government. **References:** U. S. Sec'y. of the Treasury *Annual Reports*; H. C. Adams, *Science of Finance* (1898); C. F. Bastable, *Pub. Finance* (3d ed., 1903); Nat. Monetary Commission, *Report on Fiscal Systems of the U. S., Eng., France and Germany*, 1910. A. B. H.

EVARTS, WILLIAM MAXWELL. William M. Evarts (1818–1901) was born at Boston, February 6, 1818. In 1841 he was admitted to the bar, and began practice in New York City. From 1849 to 1853 he was assistant United States district attorney. His political prominence dates from 1860, when, as chairman of the New York delegation in the Republican convention at Chicago, he put Seward in nomination for the presidency. He was the leading counsel for President Johnson in the latter's impeachment trial, in 1868, and in 1868–69 was Attorney General. In 1872 he was the principal counsel for the United States before the Geneva tribunal, in the matter of the *Alabama* claims. In 1877 he appeared before the electoral commission on behalf of Hayes, and was later rewarded with the office of Secretary of State, which he held throughout the administration. In 1881 he was appointed a delegate to the international monetary conference at Paris. He was elected to the Senate from New York in 1885, and served one term. He died at New York City, February 28, 1901. **See** Alabama Controversy; Electoral Commission; Impeachment; State, Department of. **References:** A. Shaw, in *Review of Reviews*, XXIII, 435; W. A. Dunning, *Reconstruction, Pol. and Economic* (1906); E. E. Sparks, *National Development* (1907); J. F. Rhodes, *Hist. of the U. S.* (1893–1905), V–VII. W. MacD.

EVERETT, EDWARD. Edward Everett (1794–1865) was born at Dorchester (now a part of Boston), Mass., November 11, 1794. He entered the ministry, but soon resigned his pulpit, and in 1819 became professor of Greek in Harvard College. In 1824 he was elected to Congress, where he sat for ten years, serving throughout the period on the committee on foreign affairs, supporting J. Q. Adams and opposing Jackson. From 1835 to 1839 he was governor of Massachusetts, where he dealt effectively with the conditions incident to the panic of 1837, and aided the establishment of the first state board of education. In 1841, while living abroad, he was appointed minister to Great Britain; but the appointment of Lord Ashburton as special envoy to the United States took out of his hands the most important controversies then pending. On the accession of Polk, in 1845, he was recalled, and in 1846 was elected president of Harvard, resigning in 1848 because of ill health. In December, 1852, he succeeded Webster as Secretary of State, and in 1853 was elected United States Senator. Under the strain of the Kansas-Nebraska session of 1853–54 his health failed, and he resigned his seat. Against his wish he was named as the candidate for Vice-President by the Constitutional Union party, in 1860. He died at Boston, January 15, 1865. **See** State, Department of; Whig Party. **References:** Edward Everett, *Orations and Speeches* (4 vols., 1850–68), does not include political addresses; W. Everett, "Memoir of Edward Everett" in Mass. Hist. Society, *Proceedings*, 2d Series, XVIII (1905). W. MacD.

EVIDENCE. The evidence in the legal sense of an asserted and generally disputed matter of fact, as distinguished from a principle of law or of logic, is any "fact or group of facts, not a legal or a logical principle considered with a view to its being offered before a legal tribunal for the purpose of producing a conviction, positive or negative, on the part of the tribunal, as to the truth of" the asserted fact on which the determination of the tribunal is to be asked. **Reference:** J. H. Wigmore, *Evidence in Trials at Common Law* (1904), I, ch. i, § 1. Joseph Warren.

EWING, THOMAS. Thomas Ewing (1789–1871) was born near West Liberty, Va., December 28, 1789. His family removed to Ohio in 1792, where, in 1816, he was admitted to the bar, and began a successful practice at Lancaster. In 1831 he was elected to the United States Senate as a Whig, and served one term, taking ground in favor of protection and the bank, and introducing the bill which in 1836 settled the Ohio-Michigan boundary dispute. From March to September, 1841, he was Secretary of the Treasury under Harrison and Tyler, then was once more in private life until 1849, when he was appointed the first Secretary of the Department of the Interior. In 1850 he resigned to succeed Thomas Corwin as Senator from Ohio. As Senator he opposed

the compromise of 1850, and urged the abolition of slavery in the District of Columbia. He retired from the Senate in 1851, and resumed his law practice, becoming admittedly the leader of the Ohio bar. In 1861 he was a delegate to the peace conference at Washington; but while supporting Lincoln during the war, he could not follow the extreme wing of the Republicans in reconstruction. He died at Lancaster, October 26, 1871. See Interior, Department of; Whig Party. Reference: E. E. Sherman, *Memorial of Thomas Ewing* (1873). W. MacD.

EXAMINATIONS FOR EMPLOYMENT AND PROFESSIONS.—Many a legal doctrine has had its origin in class selfishness. Examination for the right to exercise a profession doubtless began with the Royal College of Physicians, who before the time of Elizabeth, established in the courts, in derogation of the common law, their right to a monopoly in the practice of medicine by permitting no one to practise without their license; hence, the phrase "to be a member of the corporation" passed into general usage and included a share in this monopoly. The privileges and practice of such authorization differs from the licenses imposed avowedly or mainly for purposes of taxation. But though assumed to be a measure of proficiency, the test is a state examination.

If the same thing were frankly done by the persons practising any profession, it would be a combination in restraint of trade and illegal as such; and one of the main conflicts between organized labor and the common law has been that over the endeavor to require such examination or license by private rules. The clearest and earliest instance of the principle in the United States is that of members of the bar, who in nearly all the states have to be examined and formally admitted to practice, either by state statute directly, or by rules of a bar association recognized in the state law (*see* Professions and Callings). Later came the recognition of the orthodox school of medicine, then of other schools, although the attempt of the Christian Science school to be legally admitted to practice, with or without examination, has so far generally been unsuccessful. From doctors and surgeons the principle has been extended in modern times to persons exercising highly skilled trades involving the public safety, such as elevator engineers, mine foremen, engineers generally, or pertaining to public health, such as plumbers, pharmacists, or even barbers, veterinarians, blacksmiths and chauffeurs.

The general principle is that the state has a right to require examination, not only by way of taxation, but for the purpose of insuring the public health, safety or morality, and also even the protection of property. It is, in part, due to the abandonment of the apprentice system, which in a much better way ascertained competency in those exercising skilled or dangerous trades, that there is a rapid increase in such laws; the state now undertakes by the inadequate device of a written examination to supplant the stricter and wiser rules that prevailed among all the guilds, whether of labor or trade, from the earliest times in Germany, France and Flanders, and till recently in England and the United States.

See Bills of Rights; Education, Recent Tendencies in; Inspection as a Function of Government; Labor, Relation of the State to; Licenses for Callings.

References: U. S. Industrial Commission, *Report*, 1900, V, 126; U. S. Commissioner of Labor, *22d Annual Report*, 1907; F. J. Stimson, *Popular Law Making* (1910), 156.

F. J. Stimson.

EXCHANGE OF FUNDS. Government officials are forbidden to transfer or exchange public moneys to other funds, except as ordered. The Secretary of the Treasury may transfer money from a depositary to the Treasury or from one depositary to another; and the Postmaster-General may transfer money belonging to the postal service at his discretion. Contracts for the transportation of money must be let to the lowest bidder. A disbursing officer shall make payments in the moneys furnished, or if credited with a draft, in the money then received, unless he can exchange the proceeds for gold and silver at par. Federal legislation, particularly since 1846, has carefully protected Government funds in the hands of subordinates, forbidding practices which have been common in state and local financial administration. See Sub-treasury System. D. R. D.

EXCHANGE, PRINCIPLES OF. Were men unable to exchange their products with one another, division of labor would be impossible. On the other hand were division of labor lacking, there could be no occasion for the exchange of goods. In actual society, this specialization of employment, made possible by the institution of exchange, or of trade, is carried out with surprising minuteness and with astonishingly great effect upon the aggregate production of wealth and of services. The process by which these production goods pass from the producers of them to the consumers is called exchange, or trade. Commonly the producer of one sort of goods sells these for money, and with the money buys the goods which he desires for consumption. Thus money is an intermediate step, a halfway house, in the working out of a complete exchange.

It comes about, therefore, that market problems commonly present themselves as the process by which a money priee is attached to each separate commodity, and that exchange relations among commodities have to be worked out through comparison of these different rela-

tions to the price intermediate or standard, *i. e.*, the money. The process by which the exchange relation of any good, to the price good, the money, becomes fixed may be explained as follows: Market price (or market value) is the point of adjustment between all the demands for any good and all the supply of that good. The price analysis involves, therefore, an examination of the two sides of the value equation, (1) the demand, and (2) the supply. It should be evident that neither utility nor scarcity alone affords an adequate explanation of market priee. Even though a thing be useful, no one will pay for it unless the supply is so limited that he has to pay for it in order to get it. On the other hand, scarcity without utility gives no value, else mosquitoes would be valuable in the winter season.

Demand.—Demand in the economic sense means not merely utility but the disposition to pay; that is to say, demand appears upon the market as price offer. The boy with his nose glued to the window of the candy shop represents all the necessary aspects and phases of utility; but he lacks purchasing power; else he would be on the inside of the shop. Demand implies the union of desire with purchasing power.

But even with the purchasing power assumed, all—not merely some—of the items in the total supply of the good in question must offer utility, else the good being present in surplus can command no price-paying disposition. This leads us to the concept of marginal utility. Where a good is limited in supply relative to the various needs for it, each item of it must have some utility. But to no man can all the various items used afford an equal utility. One does not desire a second glass of water equally with the first, or a third suit of clothes equally with the earlier two. Desire grows less intense with partial gratification. So if one were to lose some one item out of his total stock of similar goods, the loss experienced thereby would be expressed by the importance of the desire frustrate by this loss. The least important want, dependent for its satisfaction upon the possession of the stock of goods, is called the marginal want, and the good upon which this want depends is called the good of marginal utility.

The first step, therefore, for any individual in the process of finding what price to offer for any given item of goods is to determine the degree of significance attaehing to the good in question. But this is only the first step. Whether or not he shall purchase depends not alone on the marginal utility of the particular good but also upon the marginal utility of some good which this particular use of his purchasing power will compel him to forego. Price offer, that is to say, is the outcome of a comparison between competing alternative marginal utilities. Not utility or marginal utility, but relative marginal utility, is decisive of demand.

Supply.—Given the various price paying dispositions for goods, the point of market adjustment—the price or the value—must depend upon the volume of the supply and upon the respective prices which the holders of the supply are disposed to accept. Here, similarly, the various supply prices—the asking prices —are the outcome of a comparison between the marginal utility of the good in hand and the marginal utility of some other good or goods later to be had through the money to be received. The price arrived at in the market is the point of adjustment between all the different price offers on the one side and all the items of supply with their respective supply prices on the other side. When once the price is reached, it may equally well be said either of the marginal supply item or of the marginal price offer that the case is one of approximate equality between the advantages of two competing marginal utilities. Only those buyers and sellers consent to trade to whom there accrues an appreciable advantage through the exchange either of money for goods or of goods for money. Money, however, for either side of the trade is merely the representative of an alternative marginal utility.

It thus becomes evident that the market price is approximately commensurate with the marginal demand price and with the marginal supply price. It is, however, often asserted that the price is determined by the marginal price offer, or by the marginal supply price, or by both together. The truth is, however, that no one item of the demand and no one item of the supply and no single pair of items can correctly be said to fix the price. This is fixed by all the items of demand over against all the items of supply. The price, that is to say, is fixed at the margin and not by the margin.

The analysis of exchange here presented has proceeded upon the basis of an assumed and fixed and definite volume of supply. Were the analysis to be pushed further back, it would be necessary to examine the influences which bear to fix the volume of supply. This would lead to a study of cost of production.

See Cost, Economic; Distribution; Supply and Demand.

References: E. von Boehm-Bawerk, *Positive Theory of Capital* (translated by W. Smart, 1891), IV; J. A. Hobson, *The Economics of Distribution* (1900), chs. i, ii; H. J. Davenport, *Value and Distribution* (1907), ch. xxv.

H. J. Davenport.

EXCHANGES, BUSINESS. Definition.—An association, the members of which, usually called brokers, trade among themselves, under rules established by the association, as principals or as agents on commission of principals who are not members of tLe association. The

term is also applied to such association's place of business. Exchanges should not be confused with boards of trade and chambers of commerce (*see*). There are four general classes of exchanges: (1) "produce exchanges," any one of which deals in a variety of commodities, particularly cereals and provisions; (2) specialized produce exchanges, any one of which deals in a special commodity, such as cotton and from 1862 to 1879, gold; (3) "stock exchanges," which deal in government, municipal and corporation securities; (4) miscellaneous, such as "maritime" exchanges.

Organization.—In constitution these several classes of exchanges are essentially the same. They are voluntary associations, sometimes incorporated, with by-laws, rules and regulations. The association itself conducts no business for pecuniary gain and does not share the losses and the gains of its members; it exists solely for the purpose of providing facilities for the conduct of each individual member's business, in return for which each member agrees to be governed by its regulations in the conduct of his business. The association among other things provides a common place of business for the members, fixes the hours and methods of trading and of settling accounts, fixes the rates of commissions, publishes the course of prices and the number and amounts of transactions, and punishes violations by members of its rules and regulations and of its standards of business integrity.

Methods of Business.—An exchange is the focal point of a market covering a more or less extended geographical area. Each broker receives orders to buy or sell securities or commodities; the aggregate of such orders received by all the members of an exchange makes possible trading between them. A transaction may involve immediate delivery of the property concerned, delivery at some future specified date, or the option to deliver or demand at some future specified date. The two latter cases are known as dealing in "futures" (*see*) and "options" respectively. A transaction may involve full payment for the property concerned or purchase on "margin." In the latter case the purchaser expects the broker to "carry" the property purchased, the purchaser paying a margin, say of 10 per cent, and the broker (at least nominally) borrowing the remainder of the purchase price and pledging the property as security. If the price declines the margin narrows, and if the purchaser fails to keep the margin good, the broker, to protect himself, may sell the property. One who purchases with the expectation of selling at a higher price is called a "bull" and is said to be "long" in whatever he purchases. One who sells property he does not possess, borrows the property to deliver, and expects on a falling market to buy the property to return it to the lender, thereby making a profit, is called a "bear" and is said to be "short" in whatever he sells. A property is said to be "cornered" when "bears" are unable to borrow or buy except at abnormal prices a sufficient amount to meet their contracts for delivery.

Economic Function.—The exchange is a descendent of the primitive market-place or fair. In the latter buyers and sellers of all sorts of commodities and money-changers came into personal contract. By the seventeenth century appeared exchanges trading in government and company securities as well as in commodities; also members appeared who offered as "brokers" to buy and sell for principals at a distance. Since that time the development has been along two lines; specialization in the hands of brokers; and specialization of exchanges according to the nature of the properties dealt in.

The principal economic function of the exchange are: (1) to provide, by organized markets, uniform conditions for dealing in certain properties the ownership of which is distributed over a wide geographical area—only such properties are capable of being traded in on such markets as may be divided into well-defined classes or grades; (2) to equalize prices, (a) geographically through the immediate publication of prices at which a transaction is made over the entire area which the exchange serves, and (b) in time, through equalization effected by dealing in futures.

Governmental Control.—With governments, exchanges have no relation different from that of other associations or corporations. If they fix prices, they may be held liable for restraint of trade (*see*); the transactions and stock exchanges may be subject to special taxes, or might, under some circumstances, be considered to be gambling (*see*).

See Business, Government Restriction of; Clearing House; Commerce, Chambers of; Futures, Dealing in; Stocks and Bonds.

References: Dos Passos, *Treatise on the Law of Stock Brokers and Stock Exchanges* (1905); H. C. Emery, *Speculation on the Stock and Produce Exchanges* (1890); U. S. Commissioner of Corporations, *Report on Cotton Exchanges* (1908, 1909); *Am. Year Book, 1910*, 386, and year by year. H. S. Person.

EXCISE TAXES. Duties imposed upon the process of manufactures or upon domestic trade. In American practice such taxes are now called internal revenue duties. The most important excise taxes are those on alcoholic liquors. States may, and sometimes do, lay special taxes on the manufacturer of liquor; though usually, if taxed at all, it is through licenses imposed on the dealers. See License Taxes on Occupations; Liquor Legislation; Revenue, Internal; Stamp Tax. References: F. C. Howe, *Taxation and Taxes in the U. S. under the Internal Revenue System, 1791–1895* (1896); U. S. Commissioner of Internal Revenue, *Annual Reports*. D. R. D.

EXCLUSION ACT. See ANARCHISTS, EXCLUSION OF.

EXCLUSION OF CHINESE. See CHINA, DIPLOMATIC RELATIONS WITH; CHINESE IMMIGRATION AND EXCLUSION.

EXECUTION OF PROCESS. Besides the legal term "execution," as applied to the taking possession of persons or things under a mandate of the court, there is a system for the carrying out of the writs of the court, commonly called execution of process. An executive official of the court, the marshal sheriff or constable, or regular police officer, receives a written mandate or precept directing him to serve a subpoena, notice of suit, or of proposed proceedings under a suit, or a warrant of arrest. Under the old English doctrine that the Englishman's house is his castle, no one has a legal right forcibly to enter a man's premises to serve a civil process, especially attachments for debt; but it is common to accept service. Corporations are frequently compelled by their charters to designate, within the state from which the charter issues, an official, service upon whom shall be service upon the company. The question whether process has been properly served is especially important in divorce cases, and gives rise to much litigation. Where resistance to the legal service of process occurs, recourse may be had to the *posse comitatus* (*see*) or to military force. See COERCION OF INDIVIDUALS; GOVERNMENT BY INJUNCTION; ORDER, MAINTENANCE OF. **References:** A. B. Hart, *Actual Government* (1903), 250–253; *Am. and Eng. Encyc. of Law* (1887–1896), XIX, 222, 224. A. B. H.

EXECUTIVE AND CONGRESS

Separation of Powers.—The relations between executive and Congress may be viewed both in the light of the constitutional arrangements of 1787 and of the practices which have developed since then and modified them. The fathers of the Constitution believed in the separation of powers (*see*), a principle which had been popularized by Montesquieu and endorsed by Blackstone in his *Commentaries.* With these great writers they thought that the excellence of the English government sprang from the separation and independence of the executive, legislative and judicial departments; and their impression, though probably mistaken, was not unnatural at a time when that government had not yet fully developed its most characteristic feature, the responsibility of the executive to the legislature. The separation of powers was, therefore adopted as a fundamental characteristic of the Constitution and placed under the guardianship of the federal judiciary. It formed part of the system of checks (*see*) and balances which was to save our government from the danger of monarchy or the tyranny of popular majorities. But the fathers were practical men whose belief in the theory did not delude them into the idea that it ought to be applied without modifications. They entrusted the Senate with executive powers in the matter of confirming appointments, and ratifying treaties, gave Congress a large control over the administration in its right to establish and regulate the various departments, and allowed the President to participate in legislation through his message and veto. Poltical practice has still further modified the principle of separation. Coöperation between independent bodies is more difficult and less efficient than action directed by a single purpose; and in the natural growth of governmental organs there is a law of survival by which the strong will dominate the weak and free their movements by breaking through artificial restrictions. The executive and legislature of the United States have been engaged in this contest for domination. Although it is not clear where the ascendancy will finally rest, they have certainly been drawing closer together, each endeavoring to strengthen its own position at the expense of the other.

Patronage.—Under the Constitution (Art. II, Sec. ii, ¶ 2) the power of appointment (except in the case of inferior (*see*) officers) is shared by the President and the Senate. No doubt, it was intended that the nominees of the President would be rejected only on the ground of unfitness. But from early times the Senate has allowed no question of motive to limit its authority, action having been taken sometimes for partisan ends either to embarrass or coerce the President. Moreover, by means of this power of rejection, the practice known as "courtesy of the Senate" (*see*) has been built up. Of course, the degree to which Senators may assume this control of patronage depends upon circumstances, especially upon the character and popularity of the President. Lincoln made good use of the appointing power to bring about the ratification of the Thirteenth Amendment. The vote of an additional state was needed; and the liberal use of patronage secured the admission of Nevada, one congressman getting a customs place worth $20,000 a year. In 1910, President Taft is said to have withheld patronage from insurgent Senators and congressmen with the idea of forcing them to support his legislative projects. The failure of this policy was followed by a public announcement that it would be discontinued.

With respect to removal from office the Constitution is silent; but only in the stress of its conflict with President Johnson did Congress provide, with doubtful legality, that the consent of the Senate should be necessary. The law was repealed twenty years later. Impeachment is a cumbersome method used only on grave occasions (*see* PRESIDENTIAL REMOVALS).

In the making of treaties (*see*) the approval of the Senate by a two-thirds vote is required. This constitutional provision (Art. II, Sec. ii, ¶ 2) has worked out in such a way that the Senate, through its committee on foreign affairs, practically takes part in the negotiations. It has even been urged by eminent authorities that the Senate as a whole should be consulted as each important stage in the negotiations is reached. Although there are cases in which the House of Representatives has undertaken, by means of resolutions, to influence the President's policy, such advice has no binding force, the concurrence of the House being necessary only when treaties require legislation to give them effect. The President has sometimes broken loose from restraint by making what are known as "executive agreements" (*see* DIPLOMATIC AGREEMENT). This course was taken by Mr. Roosevelt in 1905 when the Senate refused to ratify a treaty with Santo Domingo. He was able, by independent action, to carry out the main terms of the proposed treaty. Such a course is possible because the distinction between treaties and agreements is insusceptible of exact definition.

Congressional Control over Administration.—In another notable respect the Constitution allows Congress to invade the executive domain. Although the President is head of the national administration, with the obligation to see that the laws are faithfully executed and the power to require the opinions of the departmental chiefs, yet the departments themselves, being organized by Congress, are subject to close statutory regulation. The President, therefore, in directing the heads of departments and their subordinates is limited by the will of Congress as expressed in statutes, though otherwise his power of removal gives him ample authority. His discretion is wider in some departments than in others. For instance, Congress has left him a free hand in the conduct of foreign affairs through the State Department (*see*) and has, on the other hand, brought the Treasury closely under its own control. There are various other ways in which Congress seeks to connect itself with the administration. Committees or members frequently ask the advice of departmental chiefs in framing bills; the opinion of the Attorney General is sought; incessant demands are made for information or documents. In most cases the administration complies, partly because the success of its legislative programme depends upon cordial relations with Congress. Officials humble themselves before the standing committees and submit to vexatious inquiry into their methods and conduct because they are dependent upon these committees for the money and legislation which they require. Although Congress cannot remove objectionable officials (except by the clumsy method of impeachment), it may discredit them by semi-judicial investigations and thus force their resignation or dismissal. Such investigations (*see*) may examine into almost any phase of executive activity.

Presidential Legislative Powers.—The most important legislative powers of the President are his veto (*see*) (Art. I, Sec. vii, ¶ 2) and message (*see*). Although the veto is not absolute, it has rarely been overridden by the necessary two-thirds vote in both houses. If the President disapproves a bill for political reasons, his partisans are fairly certain to be strong enough in one of the houses to prevent repassage; and if he disapproves because the bill is bad and deserves to fall, wavering votes will be turned to his support by the play of public opinion. Not many bills are disapproved; but the importance of the veto cannot be measured by the frequency of its use. The fact that the President holds the weapon in reserve gives him a firm position from which he can negotiate and impose his will on Congress. It is possible for him not only to prevent the enactment of bad laws, but, by intimating what changes he considers essential, to remove objectionable features from measures which are good in principle. The possession of the veto places upon the President a responsibility which the people, somewhat distrustful of their legislators, now expect him to discharge with boldness. The message brings him into contact with Congress in a less formal way. It is the medium through which, in conformity with the constitutional requirement (Art. II, Sec. iii), he gives Congress information on the state of the Union and recommends such measures as he may judge necessary and expedient. The recommendations may be stated generally or even take the form of drafted bills. Congress is in no way bound to act upon them. But as they are supposed to represent the programme of the President's party and come from a responsible source backed by the weight of executive judgment and experience, they receive a wider publicity and excite a more general interest than do the debates or votes in either house. The nation understands what the President wants; and Congress cannot afford to turn a deaf ear.

The increasing influence of the message rests, in fact, upon the rôle which the President has come to assume as party leader. Mr. Roosevelt laid his policies before the country much like an English prime minister and forced his party to accept them. Mr. Taft, who expressly declared his assumption of the leadership, followed a similar course. He made speeches through the country regarding the tariff,

reciprocity, conservation (*see*), and other important subjects. In the case of the tariff legislation of 1909 his interviews with members of the conference (*see*) committee, which was charged with adjusting the differences between the two houses, led to certain changes in line with the party pledges. He carried the Canadian reciprocity agreement through Congress by the help of Democratic votes, appealing over the heads of Republican Senators and Representatives for the approval of the rank and file of the party. His withdrawal of patronage from the insurgent Republicans in 1910 was the corollary of President Roosevelt's action in issuing letters in support of certain members whose reëlection he wished to secure. As the President is judged to-day by his success in securing legislation, he has to strengthen his control of Congress by whatever means he can find. "There is no present fact in the actual workings of American Governmental machinery," says George W. Alger, "which is more obvious than the great increase of executive authority and the corresponding decline of that of the law-maker. . . . When we elect a President, we elect a man whom the majority believes to be wise enough and strong enough to rule the nation. We expect him to carry into effect policies which he deems advantageous to the common weal, by causing Congress to pass his measures, using upon Congress such compulsion as may be necessary to have it accept his purposes. We expect the President and his officers to initiate constructive legislation, and to attend to getting it made into law."

Impelled by the necessity of coöperation, executive and legislature have been brought into closer relations by devious and extra-legal methods which are often hidden from the public; but in one curious instance an opposite development has taken place. Before the time of Jefferson, when the Federalists were in control of the government, the President used to deliver his "address" orally before Congress—a practice revived by President Wilson in April, 1913—and members of the Cabinet sometimes appeared in person to impart information and outline their policies. Nothing in the Constitution prohibits such close public relations. While the heads of departments, as officeholders, are excluded from membership in either house, they are not deprived of the privilege of attending sessions, as the German Chancellor does, in order to explain and defend legislative proposals and administrative acts. Nevertheless the early practice was discontinued; and there seems little prospect of a recurrence to it, although such a course has been suggested several times, notably by a committee of the Senate in 1881, and by President Taft in his message of December 19, 1912. It is felt that the independence of the executive would be imperilled thereby; that ultimately, as happened in England, the legislature would make the Cabinet officers subservient to itself and divest the President of all real executive authority. As matters stand, administrative experience has little part in the business of law-making. Congress, without responsible leadership or adequate information, grinds out through its isolated committees a great mass of laws which are sometimes unnecessary and often badly drawn. According to Senator Aldrich the lack of a properly articulated fiscal system costs the country three hundred million dollars a year. These are some of the weaknesses of a system which has the undoubted advantage of great stability.

See Committee System; Congress; Congressional Government; Cost of Government; Executive Departments; Executive and Executive Reform; House of Representatives; Patronage; Senate.

References: C. A. Beard, *Am. Government and Politics* (1910), chs. viii, x, xi, *Readings in Am. Gov. and Politics* (1911), 265–269; J. Bryce, *Am. Commonwealth* (4th ed., 1910), I, chs. vi, xx, xxi; J. H. Finley and J. F. Sanderson, *The Am. Executive and Executive Methods* (1908), ch. xv; W. Wilson, *Congressional Government* (15th ed., 1900), *Constitutional Government in U. S.* (1908); H. J. Ford, *Cost of Our National Government* (1910); P. S. Reinsch, *Readings on Am. Fed. Government* (1909), ch. iii; Perry Belmont, "Cabinet Officers in Congress" in *No. Am. Rev.*, CXCVII (Jan., 1913), 22–30.

Charles A. Beard.

EXECUTIVE AND EXECUTIVE REFORM IN THE AMERICAN SYSTEM

Principles of Organization.—In the organization and distribution of the executive power in the United States, two fundamentally different principles are followed. One is the method observed in the organization of the federal executive, the other is that applied in the organization of the executive power in the states. In the former case the principle of concentration of power in the hands of a single responsible chief prevails; whereas in the case of the states, there is a division of power and responsibility between the chief executive and a number of other persons, virtually his colleagues, over whom he has little or no power of control. The Constitution of the United States (Art. II, Sec. i, ¶ 1) vests the execu-

tive power in the hands of a President, and the heads of departments, among whom the actual work of administration is partitioned, are his subordinates. They are appointed by him, are subject to his direction, within the limits of the law, and may be removed by him with or without cause.

Organization of the State Executive.—The executive power in the states, on the contrary, is as stated above, divided between a chief executive and a number of other state officers who, with rare exceptions, are elected by the people to whom alone, they are responsible. In the early constitutions the principal state officers who shared with the governor the executive power were generally either chosen by the legislature or appointed by the governor. In the latter case coördination and unity in the administration were secured and the governor was able to exercise a limited power of control over the administrative personnel. In the course of time, however, these officers were made elective by the people and the customary constitutional formula for vesting the executive power was changed in many cases to conform to the facts. That is, to the usual distributing clause: "The supreme executive power shall be vested in a Governor" was frequently added, "the executive department of this state shall consist of a governor, a lieutenant governor, a secretary of state," etc. The result is that the governor is not the head of the state administration in the sense that the President of the United States is the head of the national administration. He has no general power to remove, direct or discipline officers elected by the people. In the administration of the particular branches of affairs intrusted to them, they are independent of the governor as of each other, and owe no responsibility to him. His power of supervision over the administration, where he has any at all, is limited to the right of examination into the condition or administration of their offices and sometimes of removing them for gross negligence, corruption or misfeasance. Such power was conferred on the governor, for example, by an amendment to the constitution of Michigan in 1862, largely in consequence of the discovery that the treasurer was a defaulter, a condition known to the governor, who had, however, no power of removal except through the cumbersome method of impeachment. The example of Michigan has been followed by a number of other states.

In a few states, of which New York is an example, the governor may temporarily suspend the treasurer when it shall appear that he has violated his duty but he cannot remove the treasurer from his office. Usually, however, the governor may remove his own appointees subject to the restriction that the removal must be for good cause, in which case, under the rulings of the courts, the person removed must be informed of the charges against him and given an opportunity to be heard in his defense.

Recent Tendencies.—There are signs of a tendency to strengthen the control of the governor over the administration by giving him authority to make special inquiries into the condition of the several executive departments, and occasionally he is empowered to make suspensions from office during the recess of the legislature when he is satisfied that an officer has violated the law. The constitutions of several states now empower him, also, to require information in writing from the principal executive officers upon any subject relating to their respective duties; and a few make it his duty to examine at stated intervals the accounts of such officers as the treasurer and auditor. Some constitutions require the principal state officers to make periodic reports to the governor concerning their departments, but such requirements add little or nothing to his power of supervision over the administration, since he is usually powerless to suspend or remove in case the inquiries which he institutes or the reports which he receives show neglect of duty or violation of the laws.

The existing system of organizing the executive power not only leads to a division of responsibility with its resulting weakness and inefficiency but it tends to destroy unity and coördination in the administration. The governor is charged with taking care that the laws are faithfully executed but without the coöperation of the other state officers among whom the executive power is divided, he is often powerless to carry out the constitutional injunction. He cannot, to take a specific case, compel the attorney general to institute proceedings against an individual or corporation against his will, since he has neither the power of direction nor of removal. The same lack of power characterizes his relation with the other principal state officers. This lack of harmony is especially prominent when the chief executive happens to belong to a different political party from the other state officers as has recently occurred in several states where Democratic governors were elected, and at the same time Republicans were chosen to the other offices.

The obvious defects of such a system have been dwelt upon by a number of recent governors and the remedies for the evils suggested. Governor Hughes, of New York, in his inaugural address of 1909 called attention to the fact that there is "a wide domain of executive or administrative action over which the governor has no control or only slight control" and that the multiplication of departments exercising administrative powers has had the effect of splitting up the executive power into fragments thus rendering the enforcement of responsibility impossible. This tendency has been accentuated by the recent practice of creating boards and commissions the members of which are often elected by the people. Even

where they are appointed by the governor he has little power of control or supervision over the administration of affairs entrusted to them. There are now nearly 100 such boards in New York state and almost as many in Massachusetts and Pennsylvania. The cost of maintaining these boards in New York increased from $4,000 in 1880 to nearly $1,250,000 in 1895. A committee of Oregon reformers in 1909, complaining of the existing decentralized system, declared that there were, in that state, forty seven boards and commissions charged with executing the laws and managing public affairs, besides a large number of officers, each largely independent of the others, and no one responsible to the people of the state. Through the creation of these boards the executive power has been divided and distributed in such a manner as not only to weaken it but to destroy accountability. A delegate to the New York constitutional convention of 1894 described them as a "confused and senseless jumble of representative, judicial and executive functions, without the merits, and with all the demerits incident to coördinate branches of government . . . creatures of legislative cowardice and incompetency."

Proposed Reforms.—Several suggestions for thoroughgoing reform in the organization of the executive power in the states have recently been made, which if adopted, would introduce greater unity, responsibility and efficiency into state administration. One suggestion recently made by a group of reformers in Oregon looks toward a strengthening of the power of the governor by increasing his term subject to the right of recall and by vesting him not only with the appointment of the principal state officers, except the auditor, but with the appointment of sheriffs and district attorneys of the counties, all of whom are to serve during the governor's pleasure and under his immediate direction. It was also proposed to create the office of "state business manager" to organize and manage the business affairs of the state under the direction of the governor. The governor was also to have full authority and control over all state institutions and affairs now wholly or partly managed by boards and commissions. He was to be allowed to retain such boards and commissions in an advisory capacity if he wished, but the ultimate responsibility for the administration of affairs entrusted to them was to devolve upon him alone. The principal state officers were to constitute the governor's cabinet and they were to have seats on the floor of either house of the legislature with the right of debate. The suggestion looking toward the creation of a cabinet to assist the governor in the determination of questions of public policy is not entirely new, since the constitution of Florida now provides that the principal state officers shall constitute a cabinet to the governor, but it does not attempt to establish a closer connection between the executive and the legislature such as is proposed by the Oregon reformers. The Oregon proposals further provide that the governor shall have the right to introduce measures in the legislature and that it shall be his duty to introduce appropriation bills for the maintenance of the state government and public institutions.

Another suggestion, made by Herbert Croly, in his *Promise of American Life*, looks toward the concentration of greater power and responsibility in the state executive. His proposal is to vest the governor with the appointment of the principal state officers who shall collectively constitute a cabinet or council, and to give him a large power of initiating legislation. Under both plans the governor, administratively speaking, would occupy a position largely analogous to that of the President of the United States and, in addition, would be the dominating authority in matters of legislation. Under such a system, the chief power and responsibility would be concentrated in the hands of the chief executive, unity and coördination would be introduced into the administration and a governor elected to carry out a particular policy would be provided with the necessary means. The governors of several states, notably of Massachusetts, Rhode Island, and New York, have recently urged reforms along somewhat the same line, particularly in regard to increasing the governor's power of appointment and the concentration of larger responsibility in his hands. The present system of independent departments, boards and commissions can hardly be permanent. In the interest of harmony, economy, and efficiency many of these bodies require to be consolidated, as has recently been done in a few states, and the chief responsibility concentrated in fewer hands.

Indeed, a system of state rule by commission, similar to that in vogue in many cities (*see* COMMISSION SYSTEM OF CITY GOVERNMENT), has been recommended by a state governor.

See BOARDS, STATE EXECUTIVE; COMMISSIONS IN AMERICAN GOVERNMENT; EXECUTIVE POWER; GOVERNOR; PRESIDENT; STATE GOVERNMENTS.

References: C. A. Beard, *Am. Government and Politics* (1910), ch. xxiv, *Readings in Am. Government and Politics* (1911), ch. xxiv; P. S. Reinsch, *Readings on Am. State Gov.* (1911), ch. i; G. Bradford, *Lesson of Popular Government* (1899), II, ch. xxx; H. Croly, *Promise of Am. Life* (1909); W. F. Dodd, "Notes on Current Legislation" in *Am. Pol. Sci. Review* (1898), 243–248; J. H. Finley and J. F. Sanderson, *The Am. Executive and Executive Methods* (1908), chs. iii, viii; C. E. Merriam, in New York State Library, *Reviews of Legislation* (1901–1906), also *Indexes of Legislation* (1907 to 1988); W. H. Taft, *Four Aspects of Civic Duty* (1906); F. H. White, "State Boards and Commissions" in *Pol. Sci. Quart.*, XVIII (1903), 631.

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EXECUTIVE AND JUDICIARY. Owing to the adoption, in American constituions, of the principle of the separation of powers (*see*), except possibly in that of New York, as well as to the American principle of leaving unconstitutional actions as well as unconstitutional laws to be determined by the courts, the executive and the judiciary are brought into direct and sometimes conflicting relation. This is especially true of the state executives and the federal courts, for although under the Eleventh Amendment (*see*) a state may not be sued by individuals even in the federal courts, it has been generally held that the prohibition does not apply to an injunction or mandamus suit brought under federal statute or constitutional provision against a state officer (*Ex parte* Young, 209 *U. S.* 123). The converse, the invocation of the state judiciary against a federal officer, has rarely been tried and never successfully; as in the case where a man was held by federal authority for violation of the fugitive slave law (Ableman *vs.* Booth, 21 *Howard* 506); or where a recruit was held in like manner by the federal military authority (Tarble's case, 13 *Wallace* 397). Nor, on the other hand, must the fact be lost sight of that there was an early act of Congress, in 1793, forbidding the granting of writs of injunction by United States courts to stay proceedings in any court of a state except in matters of bankruptcy (*Revised Statutes* 720).

As to both jurisdictions, the principle may broadly be laid down that the courts may not control the executive in any case of discretion, nor in any political matter, except, however, in that even in matters political the unconstitutional orders of an executive, even of the President himself, are null; and while they will not under any principle of *respondeat superior* give any right of action against the government, state or federal, they may cause the officer or other person executing them to be liable in damages All the above principles are peculiar to the American constitutional system; hardly to be found in English constitutional law and not at all in continental governments (*see* Courts and Tribunals, Administrative).

The doctrine that the executive may be compelled to carry out ministerial acts which it is his duty without discretion to perform, was originally laid down as to the Secretary of State in Marshall's opinion in Marbury *vs.* Madison (*see* 1 *Cranch* 137). This has never yet, however, been extended to the President himself. That merely political actions by an executive are not a subject of judicial review or injunction, was decided as to the President in the case of Mississippi *vs.* Johnson (4 *Wall.* 475); as to the Secretary of War in Georgia *vs.* Stanton (6 *Wall* 50) (*see* Political Questions and Judicial Authority). The most interesting case on the nullity of unauthorized executive action and the right of private parties to sue therefor is Little *vs.* Barreme (2 *Cranch* 170). In this case a Danish brig, the *Flying Fish*, was captured near Hispaniola by a United States frigate, whose captain, Little, brought her in to Salem, under an order of President Adams suspending commercial intercourse with France and authorizing any naval officer to send a vessel into port to be dealt with according to the act of Congress when under just suspicion of being engaged in such trade. The Massachusetts district court condemned the vessel, but did not award damages, which the circuit court reversed, and on appeal the claim to damages was sustained, Marshall saying:

> I confess the first bias of my mind was very strong in favor of the opinion that though the instructions of the executive could not give a right, they might yet excuse from damages. I was much inclined to think that a distinction ought to be taken between acts of civil and those of military officers; and between proceedings within the body of the country and those on the high seas. . . . I was strongly inclined to think that where, in consequence of orders from the legitimate authority a vessel is seized with pure intention, the claim of the injured party for damages would be against that government from which the orders proceeded, and would be a proper subject for negotiation. But I have been convinced that I was mistaken.

But while an unconstitutional executive order may thus give right to damages against the persons executing it, the courts will not attempt to enjoin the enforcement by the executive of a statute simply because it is alleged to be unconstitutional. In Wilson *vs.* Shaw (204 *U. S.* 24), a tax payer in the District of Columbia endeavored to get an injunction against the Secretary of the Treasury from borowing money or expending money for the Panama Canal. In Mr. Justice Brewer's opinion he found that acts of Congress since the recognition of Panama and the cession of the Canal Zone show a full ratification by Congress of what had been done by the executive: "Their concurrent action is conclusive upon the courts. We have no supervising control over the political branch of the Government in its action within the limits of the Constitution."

Indirectly the federal executive, as well as the executive of those states where judges are still appointed, and for life, derives a very great control over the judiciary from the appointing power; and finally it may be said that this influence of the executive upon the judiciary is perfectly a legitimate and proper method by which a changing public opinion may ultimately find its way into the constitutional decisions of the Supreme Court of the United States.

See Courts and Unconstitutional Legislation; Courts, Federal; Judiciary and Congress; Law, Constitutional, American; Political Questions and Judicial Authority; Separation of Powers.

F. J. Stimson.

EXECUTIVE BOARDS, STATE. See Boards, State Executive.

EXECUTIVE DEPARTMENTS.

Historical Statement.—The executive departments are the chief agencies through which the affairs of the National Government are administered. At the present time (1913) they number ten, the names of which, with the dates of their creation, are as follows: State, 1789; Treasury, 1789; War, 1789; Navy, 1798; Post Office, 1829; Interior, 1849; Justice, 1870; Agriculture, 1889; Commerce, 1903; Labor, 1913. The Department of War, as originally created, had charge of naval as well as military affairs, properly speaking. The office of Attorney-General of the United States existed from the date of the adoption of the Constitution, but it was not until 1870 that a Department of Justice, with the Attorney-General as its head, was created. The Department of Commerce was originally created as the Department of Commerce and Labor; it received its present designation upon the creation of the Department of Labor in 1913. The organization and duties of these departments, as well as the functions performed by their heads collectively as a Cabinet to the President, are elsewhere described under appropriate captions. Discussion here, consequently, can be restricted to those features common to them all, or to those points which affect especially their position in the constitutional system.

Relations.—Among these general features the first and most important has to do with the relations which exist between the departments, on the one hand, and the President and the Congress on the other. In distributing governmental powers among the three branches of the Government, the legislative, the judicial and the executive, the Constitution did not use the latter term as synonymous with administration. The intent of the framers of the Constitution, in vesting the executive power in the President, was primarily to confer upon the chief executive the power of performing acts of a political nature, such as the conduct of foreign affairs, which are not subject to judicial review, and of taking such steps through the use of force or otherwise, as might be necessary to insure proper execution of all laws duly enacted. Their intent in respect to vesting authority for the administration of affairs, other than those of a political nature as above described, was not clearly set forth in the Constitution. This can be seen through the fact that in the case of one or more of the departments the Secretary is required to make his annual reports direct to Congress instead of to the President; that where it desires to do so, Congress has provided for the management of certain services, such as the Government Printing Office, by joint committees of the two houses; that subordinate officials are given authority to perform certain acts without the consent, approval or intervention in any way of their administrative superiors or the President.

Especially has Congress retained in its hands almost exclusive powers in respect to the administration of the financial needs of the departments. Although the heads of departments are required to submit annually to Congress estimates of the amount of funds which, in their opinion, will be required to maintain their service during the ensuing year, Congress not only departs from the estimates in respect to granting less than is asked for but does not hesitate to appropriate moneys which are not only not asked for but which the President and the Secretaries believe to be unnecessary and a pure waste of money. This is in marked contrast with the British system where not a shillings can be appropriated by the Parliament except upon the initiative or approval of the ministry in power. This is a point of far-reaching significance since it is this feature of the American system that, as is pointed out by Prof. H. J. Ford, in his work on the *Cost of our National Government*, constitutes the fundamental explanation of the extravagance which marks the appropriations of public moneys.

Notwithstanding the fact that, from a strictly legal standpoint, the President does not have full authority in respect to the direction and control of administrative affairs, steady progress has been made since the adoption of the Constitution, in the direction of strengthening the administrative powers of the President. This result has largely been the outcome of the position early established, that, though the appointments of most officials by him have to receive the approval of the Senate, the power to make removals is vested in him alone. It is through this power, primarily, that the President is able to establish himself as the chief administrative, as well as the chief executive, officer of the Government. Though his inherent authority to issue orders to administrative officers may, from the strictly legal standpoint, be questioned, the fact that he can remove an officer refusing to comply with his wishes, and appoint one who will do so, gives him as complete powers of control as are necessary to make his will effective. This was clearly demonstrated in the famous case of the action of President Jackson in compelling the removal of deposits of government funds from the United States Bank (*see* BANK OF UNITED STATES, SECOND).

It would be improper, however, to base the present power of the President over the de-

partments exclusively upon his power of removal. There has been a constantly increasing tendency to construe the provisions of the Constitution which provide that the President shall see that all the laws are faithfully executed and may require the heads of the executive departments to give him their opinion in writing (Art. II, Sec. ii, ¶ 1) upon any subjects relating to the duties of their offices, in such a way as to strengthen the authority of the President in respect to administrative affairs. A long line of opinions of attorneys general sustain the power of the President to issue and enforce executive orders pertaining to administrative matters, and the courts are exceedingly cautious in upsetting practices thus firmly established.

Extra-Departmental Officers.—Other facts that it is important to note are: that all of the administrative services of the Government are not under the ten executive departments; and that, even where executive departments are created, it is not necessary, either as a matter of law or policy, that their heads should be members of the President's Cabinet. At the present time (1913) there are a considerable number of services which are not under the jurisdiction of any of the existing departments. The most important of these are the Interstate Commerce Commission (*see*), which has important administrative as well as judicial or quasi-judicial functions, the Civil Service Commission (*see*), and the Government Printing Office, not to speak of a large number of special institutions and bodies such as the Smithsonian Institution (*see*), the Commission of Fine Arts, etc. As regards the second point, there are at least two instances where independent departments have been created, the heads of which were not made members of the Cabinet. The Department of Agriculture occupied this status for some years after its creation, as did the Department of Labor, prior to the creation of the Department of Commerce and Labor, when it was made a bureau of that department. This is a matter that is of considerable importance, since, with the constant extension of the activities of the National Government, it may well be found desirable to increase materially the number of independent departments, while any further increase in the size of the Cabinet might be deemed unwise.

See Cabinet of the President; Committee System; Congress; Congressional Government; Executive and Congress; President, Authority and Influence of; Departments by name.

References: W. W. Willoughby, *Constitutional Law of the U. S.* (1910); F. J. Goodnow, *Administrative Law* (1905); H. C. Gauss, *The Am. Government* (1908); J. A. Fairlie, *The National Administration of the United States* (1909); J. H. Finley and J. F. Sanderson, *The Am. Executive* (1908); H. J. Ford, *The Cost of the National Government* (1910); M. L. Hinsdale, *Hist. of the President's Cabinet* (1911); H. B. Learned, *The President's Cabinet* (1911); C. A. Beard, *Readings in Am. Government and Politics* (1911), 197–206; P. S. Reinsch, *Readings on Am. Federal Government* (1909), ch. ix. W. F. Willoughby.

EXECUTIVE POWER

Definition.—The executive power is commonly defined as that which is concerned with the enforcement of the laws. Such a conception, however, is narrow and restricted; it subordinates, in effect, the executive to the legislature and does not adequately indicate the totality of executive functions in the modern state. The rôle of the executive is in reality much more extensive than the mere ministerial function of executing the commands of the legislature; it involves the rendering of important decisions, the exercise of wide discretion and judgment, the power of direction and the formulation and carrying out of constructive policies. The distinction between the executive power and the legislative power is, therefore, not merely that between will and execution. In a larger sense the executive is the director of the public life of the state and its representative in all its relations with foreign states. Some writers go to the length of treating the judicial function as a part of the executive power since the judiciary is concerned mainly with the application and enforcement of the legislative will (*see* Judicial Power, Theory).

Principles of Organization.—The executive power is fundamentally different in nature from the legislative power and must be organized on different principles. The peculiar function of the legislature is to deliberate, to consult upon the varied needs of society and to formulate the will of the state in respect to the multitudinous affairs which require to be regulated. The primary, though not the sole, function of the executive, on the other hand, is to administer and enforce the will of the state as thus formulated. For the intelligent exercise of the legislative power an assembly of representatives is better fitted than a single individual. The executive power must be so organized as to secure promptness of decision, singleness of purpose and energy of action. These objects can only be obtained by vesting the executive power in the hands of a single person. To organize the executive power by dividing it between a number of coequal au-

thorities would necessarily lead to its enfeeblement and in times of crises when promptness of action and decision are essential it might result in grave danger to the life of the state. The most distinguished statesmen, observes Judge Story, have uniformly maintained the doctrine that the executive power should be vested in the hands of a single person in order to secure the results mentioned above. The advantage of a single chief executive is, Woolsey adds (*Political Science*, II, 270), that he is able to bring unity and efficiency into the government, whereas two presidents would be apt to checkmate one another, especially if they were of different parties, and if of the same party they would be jealous rivals of each other.

Where the executive power is organized on the collegial principle, responsibility, as Mill has shown, cannot be enforced; it is easily shifted from one shoulder to another and as a result both the incentive in the executive and the advantage of restraint by public opinion are lost

History affords but few examples in which the executive power was organized on such a principle. In ancient Athens the executive power was split into fragments and divided between generals and archons; in Rome, for a time, it was divided between two consuls; in Sparta, during its early history, there were two kings; in France, from 1795 to 1800, the executive power was vested in a directory of five persons and later in three consuls, two of whom, however, were little more than figureheads. At the present time in every country except Switzerland, where there is an executive council of seven members, the executive power is organized on the single-headed principle.

Content of the Executive Power.—Concerning the nature and scope of the executive power the thought and practice of modern states are now in substantial accord. Roughly speaking, it embodies the following group of activities: (1) the management of the foreign relations of the state, either alone or in conjunction with the legislature or one branch thereof; (2) the execution of the laws and treaties; (3) the appointment, direction and removal of the higher officials of the administrative service; (4) the command of the military and naval forces; (5) the power to approve or disapprove the acts of the legislature, to recommend measures for its consideration; and sometimes to summon, open and adjourn its sessions; and (6) the power to grant pardons for offenses against the laws.

The constitutions of all countries vest the authority to negotiate treaties and other international agreements in the executive, though as a means of preventing errors or abuses by an unwise, ambitious or unscrupulous executive, the power of ratification is commonly conferred upon the legislature or one branch of it. The treaty making power is such, however, that the legislature cannot wisely be allowed a direct power in the procedure of negotiation. Strictly speaking, the treaty making power is neither purely legislative nor executive in character; it constitutes a sort of mixed zone, as Esmein has pointed out, lying between the executive and legislative spheres. Nevertheless there is no difference of opinion in regard to the wisdom of entrusting it to the executive.

The Ordinance Power.—An important domain of executive power is that of issuing ordinances, regulations or decrees laying down rules for the guidance of administrative officials, interpreting the meaning of statutes, or of supplementing the laws in respect to many matters which have been left to the discretion of the executive. This is the *pouvoir réglementavie* of the French. In France the legislature rarely descends into details but merely lays down general rules leaving to the executive the power to supply the details by means of *ordinances* (*see* ORDINANCES, EXECUTIVE). In England the "statutory rules and orders" issued by the departments of state, particularly the home office and the local government board furnish numerous examples of executive legislation.

In monarchical states the executive possesses a large undefined residuary power known as the "royal prerogative." As defined by Dicey this consists of the "residue of discretionary authority left at any moment in the hands of the king." It does not rest upon statutory authority but is what remains of his common law powers. In certain fields it is still quite extensive though the tendency has been to restrict it by statute or regulate its exercise.

See EXECUTIVE AND EXECUTIVE REFORM; ORDINANCES, EXECUTIVE; GOVERNOR; LAW, ADMINISTRATIVE; PRESIDENT.

References: J. Barthélemy, *Rôle du Pouvoir Executif dans les Républiques modernes* (1906), Introduction; A. Esmein, *Droit Constitutionnel* (4th ed. 1910), Pt. II, ch. ii–iii; A Hamilton, in the *Federalist,* Numbers 67, 70; J. S. Mill, *Representative Government* (1872), ch. xiv; H. Sidgwiek, *Elements of Politics* (1897), ch. xxi; J. Story, *Commentaries on the Constitution* (5th ed., 1890), §§ 1410–1429; T. D. Woolsey, *Political Science* (2d ed., 1893), II, 275–277; J. W. Garner, *Intro. to Pol. Sci.* (1910), ch. xvi.

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EXECUTIVE SESSIONS. The term is applied to those legislative sessions, usually of the Senate, held to consider confidential business submitted by the executive, especially the confirmation of appointments, and, in the case of the United States Senate, the ratification of treaties. See APPOINTMENTS TO OFFICE; RATIFICATION OF TREATIES; SENATE. R. L. A.

EXECUTIVE SYSTEM OF GREAT BRITAIN. There are eighteen executive depart-

ments of the British Government represented in the Cabinet or the Ministry, and also represented in the House of Commons or the House of Lords by their political chiefs, all nominated by the Prime Minister. They are: (1) the Treasury, of which the Premier is First Lord, and of which the Chancellor of the Exchequer is the most important official; (2) the Privy Council, with its Lord President, the official who for two centuries has linked the Cabinet with the Privy Council, from which issue nominally the Orders-in-Council; (3) the Home Office, charged with the administration of criminal law, control or oversight of police, and administration of factory and mining codes; (4) the Foreign Office; (5) the Colonial Office, concerned with the four oversea dominions—Canada, Australia, New Zealand and South Africa—and with the crown colonies; (6) the India Office, concerned exclusively with the Indian Empire; (7) the War Office charged with the control of the army and the territorial force—the political heads of these five departments are the five principal secretaries of state; (8) the Admiralty, whose head is the First Lord; (9) the Post Office, administrating the postal, telegraph and telephone systems, under the Postmaster General; (10 and 11) the Scotish and Irish offices, serving Scotland and Ireland in many departments of administration much as the Home Office serves England, with the Chief Secretary for Ireland and the Secretary for Scotland in Parliament, both usually members of the Cabinet; (12) the Board of Trade, charged with the administration of marine, railway and public utilities codes, and with some oversight of canals, docks and harbours; (13) the Local Government Board, concerned with the administration by the local authorities of the poor law and the municipal code; (14) the Board of Education, which in 1899 superseded the Committee of Council for Education, and has oversight of all schools maintained out of public funds; (15) the Board of Agriculture, charged with the administration of the allotments acts, and of the laws for preventing cattle disease; (16) the Duchy of Lancaster, charged with the appointment of magistrates and with some other duties in the County Palatine; (17) the Office of Public Works and Buildings, charged with the oversight of the royal palaces royal parks and government buildings in London and the provinces; (18) the Department of the Lord Chamberlain, which has supervision of the Royal Household "above stairs," arrangements for presentations at court; also the censorship of plays and the licensing of certain theatres.

With the important exception of the Foreign Office and the department of the Lord Chamberlain, and to some extent the Home Office, the powers of state departments are based on acts of Parliament. The political head of a department is subject to little or no direct supervision from the Cabinet; but he is liable to have questions addressed to him in Parliament, and his actions can be criticized when the votes for his department are before the House of Commons in committee of supply. Cabinet sanction must be obtained for a bill originating in any state department, for such a bill is introduced as a government measure. As no records of Cabinet meetings are kept, it is impossible to say how much aid a minister may receive from his colleagues of the Cabinet in administering his department. Gladstone declared it "a prime office of discretion for each minister to settle what are departmental acts in which he can presume the concurrence of his colleagues in the cabinet, and in what more delicate, weighty or peculiar cases he must positively ascertain it."

See ADMINISTRATION IN EUROPE; CABINET GOVERNMENT; CABINET GOVERNMENT IN GREAT BRITAIN; LOCAL GOVERNMENT IN ENGLAND; PREROGATIVE; PRIME MINISTER; PRIVY COUNCIL.

References: W. R. Anson, *Law and Custom of the Constitution* (4th ed., 1909), II, Pt. I; A. L. Lowell; *The Government of England* (1908), I, iii, iv; H. D. Traill, *Central Government* (2d ed., 1908). EDWARD PORRITT.

EXEMPTIONS FROM TAXATION. See TAXATION, EXEMPTIONS FROM.

EXEQUATUR. A declaration made by the executive of a government to which a consul has been nominated and appointed, after formal notification of such appointment, addressed to the people, in which is recited the appointment of the foreign state, and that the executive, having approved of the consul as such, commands all citizens to receive, countenance, and as there may be occasion, favorably to assist the consul in the exercise of his office, giving and allowing to the consul all the privileges, immunities and advantages thereto belonging.

The following form is issued by the Department of State to principal consular officers of the United States:

President of the United States of America,

To all to whom it may concern:

Satisfactory evidence having been exhibited to me that ——— ——— has been appointed ——— of ——— at ———, I do hereby recognize him as such, and declare him free to exercise and enjoy such functions, powers, and privileges as are allowed to ——— by the law of Nations or by the laws of the United States (or "the ——— of the most favored Nations in the United States").

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

Given under my hand, at the City of Washington, the —— day of ———, A. D. 19—, and of the Independence of the United States of America the ———.

(President's Signature)

SEAL By the President:

(——— — ———)

Secretary of State.

The following certificate of recognition is issued to subordinate foreign consular officers:

DEPARTMENT OF STATE

To all to whom these Presents shall come, Greeting:

I Certify That, satisfactory evidence having been exhibited of the appointment of ——— ——— as ——— of ——— at ———, the President of the United States of America has ordered his recognition as such officer, declaring him free to exercise and enjoy such functions, powers, and privileges as are allowed to the ——— of the most favored Nations in the United States (or "——— by the law of Nations, or by the laws of the United States and existing treaty stipulations between the Government of ——— and the United States") (or as above).

In Testimony Whereof, I, ——— — ———, Secretary of State of the United States of America, have hereunto subscribed my name and caused the Seal of the Department of State to be affixed.

Done at the City of Washington this ——— day of ———, in the year of our Lord one thousand nine hundred and ———, and the ——— year of the Independence of the United States of America.

(Seal) [Secretary's Signature]

See CONSULAR REGULATIONS; CONSULAR SERVICE.

References: J. B. Moore, *Digest of Int. Law* (1906), V, 12; W. E. Hall, *Int. Law* (5th ed., (1904), 318; A. Rivier, *Principes du Droit des Gens* (1889), I, 532; E. C. Stowell, *Consular Cases and Opinions* (1909), 1, 425; John Bouvier, *Law Dictionary* (1897).

CHARLES RAY DEAN.

EXPANSION. This expression in the United States refers to the enlargement of the nation's boundaries, by which it has acquired an increasing number of new territories and dependencies. See ANNEXATIONS TO THE UNITED STATES; BOUNDARIES OF THE UNITED STATES, EXTERIOR; DEPENDENCIES OF THE UNITED STATES; and TERRITORIES by name. Reference: A. B. Hart, *Nat. Ideals Historically Traced* (1907). G. H. B.

EXPATRIATION. "Expatriation is the renunciation or abandonment of nationality" and has not yet been admitted as a right by all states, even though members of the family of nations. Some states contend that nationality may not be renounced without consent of the native state. Great Britain did not formally abandon the doctrine of "indelible allegiance" till 1870.

Germany construes ten years of uninterrupted residence abroad without consular registration as a possible abandonment of citizenship. The United States declared by act of Congress in 1868 that "the right of expatriation is a natural and inherent right of all people indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness;" (*Revised Statutes*, §§ 1999–2001), but by law of March 2, 1907, provided that naturalized citizens may lose their citizenship by more than two years of residence in the country of their origin or by more than five years' residence in any other foreign state. The United States, however, admits that expatriation and naturalization may be the subject of treaty and has made treaties accordingly with several European powers.

See ALIEN; CITIZENSHIP IN THE UNITED STATES; DECLARATION OF INTENTION TO BE NATURALIZED; EXPULSION; EXTRADITION, INTERNATIONAL; IMPRESSMENT; INDEFEASIBLE ALLEGIANCE.

References: F. Van Dyne, *Law of Naturalization* (1907); G. G. Wilson, *Int. Law* (1910), 135; 33 and 34 *Victoria*, 105, c. 14 (May 12, 1870); *U. S. Rev. Stat.* §§ 1999, *et seq.;* J. B. Moore, *Int. Arbitrations* (1898), III, 2560–2583; bibliography in A. B. Hart, *Manual of Am. Hist., Diplomacy and Government* (1908), § 192. GEORGE G. WILSON.

EXPENDITURES, FEDERAL

Principles of Comparison.—As the functions of the central government of the United States are prescribed and limited with some precision by the Constitution, leaving many forms of administrative enterprises to the states, it follows that federal expenditures are confined to certain definite ends. Within recent years there has been, however, an increasing tendency to widen the range of federal responsibility and business, and consequently the objects of expenditure are becoming more diversified. Comparison of our national expenditures with those of European nations can be made only with caution and many qualifications. The functions of the American National Government are far more limited than those of England, France, and Germany; and this difference vitiates the conclusions drawn from comparison of statistics of the respective budgets. Moreover, the older European nations have piled up debts which demand immense annual interest charges at the present time, for which allowance must be made in international comparisons of the cost of government.

Treasury Analysis.—The financial reports of the Federal Government are defective in not showing clearly the real objects of expenditure. According to traditional practice, expenditures are classified by the Treasury Department as (1) "net ordinary," and (2) "gross." Under net ordinary are distinguished (1) War Department; (2) Navy Department; (3) Indians; (4) Pensions; and (5) Miscellaneous. To these, for gross expenditures, are added (6) Premiums; (7) Interest; and (8) Public Debt. As payments on the public debt (8) and premiums (6) represent repayments of sums which have been previously borrowed

and already expended under some one of the other divisions noted above, they are omitted from consideration here. The following analysis, therefore, deals only with the items under "ordinary net" and interest on the public debt. Expenditures are also classified by administrative units rather than by functions of governmental activity. For example, to the War Department are assigned expenditures for improvements of rivers and harbors carried on under the supervision of the engineer corps of that department.

Revised Classification by Decade Years.—Accepting the rough classification of the Treasury reports, the following table shows the growth of expenditures (millions), and per capita amounts calculated from population figures at the respective dates:

TABLE I. EXPENDITURES BY DECADE YEARS

	War Department	Navy Department	Indians	Pensions	Civil and Miscellaneous	Interest	Total	Total Per Capita
1791	$ .6	--------	*	$ .2	$ 1.1	$ 1.9	$ 3.7	--------
1800	2.6	$ 3.4	*	.1	1.3	3.4	10.8	$2.04
1810	2.3	1.7	$ .2	.1	1.1	3.2	8.5	1.17
1820	2.6	4.4	.3	3.2	2.6	5.2	18.3	1.90
1830	4.8	3.2	.6	1.4	3.2	1.9	15.1	1.18
1840	7.1	6.1	2.3	2.6	6.0	.2	24.3	1.42
1850	9.7	8.0	1.7	1.9	16.0	3.8	40.9	1.77
1860	16.5	11.5	3.0	1.1	28.0	3.1	63.2	2.01
1870	57.7	21.8	3.4	28.3	53.2	129.2	293.7	7.61
1880	38.1	13.5	5.9	56.8	54.7	95.8	264.8	5.28
1890	44.6	22.0	6.7	106.9	81.4	36.1	297.7	4.75
1900	134.8	56.0	10.2	140.9	105.8	40.2	487.7	6.39
1910	155.9	123.2	18.5	160.7	180.1	21.3	659.7	7.30

* Less than $50,000.

Per Capita by Administrations.—The foregoing table is incomplete in not showing expenditures during years of actual war. The following table gives the per capita expenditure by four year periods, each being approximately identical with a presidential administration.

TABLE II. EXPENDITURES BY ADMINISTRATIONS

		Per Capita
1793–1796	Washington	$ 1.28
1797–1800	Adams	1.65
1801–1804	Jefferson	1.47
1805–1808	Jefferson	1.37
1809–1812	Madison	1.60
1813–1816	Madison, *war*	3.92
1817–1820	Monroe	2.15
1821–1824	Monroe	1.58
1825–1828	Adams, J. Q.	1.39
1829–1832	Jackson	1.20
1833–1836	Jackson	1.52
1837–1840	Van Buren	1.86
1841–1845	Harrison—Tyler	1.15
1846–1849	Polk, *war*	2.00
1850–1853	Taylor—Fillmore	1.85
1854–1857	Pierce	2.25
1858–1861	Buchanan	2.20
1862–1865	Lincoln, *war*	24.67
1866–1869	Lincoln—Johnson	10.59
1870–1873	Grant	7.03
1874–1877	Grant	6.02
1878–1881	Hayes	5.18
1882–1885	Garfield—Arthur	4.71
1886–1889	Cleveland	4.42
1890–1893	Harrison	5.34
1894–1897	Cleveland	5.14
1898–1901	McKinley, *war*	6.76
1902–1905	McKinley—Roosevelt	6.56

Gross Expenditures.—In neither this nor the preceding table are gross expenditures for the Post Office included—only that which is in exeess of the postal revenues in order to make good the deficit in this branch. From the establishment of the Government in 1789 to 1910 inclusive, the grand totals for the several objects named in Table I are as follows:

War Department	$ 6,845,100,000
Navy Department	2,563,700,000
Indians	503,600,000
Pensions	4,115,800,000
Civil and Miscellaneous	4,736,200,000
Interest	3,234,900,000
Total	$21,999,300,000

Military Defense and War.—Expenditures for military defense constitute by far the largest part of expenditures. The aggregate of the expenditures of the War and Navy departments and for pensions to soldiers engaged in war is $13,524,000,000 or nearly two-thirds of the total. As stated, however, not all of the expenditures for the War Department are for military purposes; these deductions are small and on the other hand there should be added a large part of the interest on the public debt, most of which has been incurred for the carrying on of war. It is approximately correct to conclude that nearly three-fouths of the total federal expenditures have been devoted to military defense and war.

More specifically, expenditures for the War and Navy departments during the three greater wars have been as follows, in millions:

	War	Navy	Total
War with England, 1812–1815	66.6	26.5	93.1
War with Mexico, 1846–1848	73.9	23.7	97.2
Civil War, 1862–1865	2,713.6	314.2	3,027.8

The expenditures for the Civil War are inadequately represented by the figures given above, for to this must be added pensions and interest on the public debt. In 1879 an estimate was made of the expenditures growing out of the war down to that date, making the enormous sum of $6,190,000,000. Since then, pensions and interest have piled up a further burden, making the Civil War responsible for half of the total expenditures of the Government since its establishment.

The eost of the Spanish War is not easily determined. Expenditures during its brief

duration were not large but the new responsibilities assumed consequent upon victory greatly increased the budget for the War and Navy departments. During the four years of peace, 1894–1897, the expenditures for these two departments were $328,000,000; in the next four years, 1898–1901, they were $842,000,000. The higher level of expenditure for which this war was immediately responsible has since been maintained. Particularly is this true for the outlays of the Navy. Rarely for any one year

Between 1892 and 1897, years of peace, the pension administration cost $880,000,000, or approximately 98 per cent of the internal revenue receipts, or 88 per cent of the customs receipts for the same period.

A striking illustration of the effect of war upon the growth of expenditures is seen in a comparison of per capita expenditures for 1878 to 1897, twenty years of peace, with 1898 to 1902, years including and immediately following a war:

	All Expenditures	Civil	Army	Navy	Interest	Pensions
1878–1897	$5.00	$1.48	$0.75	$0.35	$1.90	$2.42
1898–1902	6.67	1.53	1.95	.86	1.47	2.33
Difference	+1.67	+0.05	+1.20	+0.51	—1.43	—0.09

between the Civil War period and 1898 were expenditures for the War Department more than $50,000,000; since the latter year they have ranged between $112,000,000, and $161,000,000. Although a beginning was made in the development of a modern naval fleet in Cleveland's first administration, the annual expenditures of the Navy down to 1898 never exceeded $35,000,000. Since then they have steadily grown, reaching, in 1904, more than $100,000,000 and in 1910 amounting to $123,000,000. In part this is due to the new demands created by the Government in protecting its new colonial possessions, and in part to the more intimate participation of the United States in world politics and the conviction that the integrity and dignity of the Government can be maintained only by a generous provision for defense.

Following are the war expenditures for the ten years 1902 to 1911 (millions); this represents simply the eost of preparation for war, the expenditures having been made in time of peace:

Navy	$1,106
Army	978
Fortifications	71
Buildings at Arlington, Soldiers' Home and Hospital for Insane	15
Militia	22
Total	$2,192

Pensions.—Expenditures for pensions now constitute about one-fourth of the ordinary disbursements of the Government. By 1880 the annual disbursements for this purpose reached $50,000,000 and in 1890 more than $100,000,000. For several years thereafter the annual outgo was about $140,000,000 but recent legislation established a new high level of $162,000,000 in 1909. The total pension expenditures since the establishment of the Government to 1911 were $3,913,000,000, divided as follows:

War of the Revolution	$ 70,000,000
War of 1812	45,757,000
Indian Wars	9,996,000
War with Mexico	42,493,000
Civil War	3,686,462,000
War with Spain	26,384,000
Regular establishment	15,507,000
Unclassified	16,484,000

Interest on Public Debt.—In 1867, the maximum amount of interest on the public debt paid in any one year was $143,782,000. With a rapid extinction of indebtedness afforded by repeated treasury surpluses after 1880 as well as by refunding operations, this annual charge was rapidly reduced until in 1892 it was lowered to $23,000,000. New loans for the purchase of the gold reserve after the panic of 1893, and for the Spanish War, raised this annual item to $40,000,000 in 1900. Another refunding measure in that year as well as further extinction of debt has lowered this expenditure to less than $22,000,000 in recent years.

Miscellaneous Expenditures.—The civil and miscellaneous expenditures in 1910 amounted to $180,760,000. Here are included disbursements for legislative, executive and judicial branches of the Government, other than those already referred to above. Among the important special items illustrating the activities of the Federal Government in 1910 are:

Public Printing	$ 5,451,000
Public Buildings	18,034,000
Collecting Customs Revenue	10,492,000
Reclamation Fund	7,889,000
Deficiency in Postal Revenue	8,496,000
Forest Service	4,503,000
Census Office	6,419,000
Lighthouse Establishment	6,007,000
Regulation of Immigration	2,325,000
Interstate Commerce Commission	1,156,000
District of Columbia	11,650,000
Colleges for Agriculture	2,000,000

For many years after the Civil War, civil and miscellaneous expenditures averaged about $60,000,000 annually. In 1874 they reached $85,000,000, but not until 1885 were they again so high. In 1891 they jumped to $110,000,000 from $81,000,000 in the preceding year, and since 1903 they have been annually in excess of $125,000,000, reaching in 1909 $186,502,000. These fluctuations have been due to special causes, as, for example, $15,500,000 in 1874 in payment of the award of the Geneva Tribunal; the payment of *Alabama* claims in 1885; the refunding of $11,521,000, direct taxes, in 1891; sugar bounties, $36,000,000, in the years 1892–1898; and payment to Spain, $20,000,000, in 1899.

More recently, since 1900, the increases have been due to payments on the Panama Canal, the total disbursements for 1903–1910 amounting to $204,000,000; to reclamation projects; to the cost of territorial governments; to pure food and meat inspection, a new administrative activity of the Federal Government; to the extension of forest service; and to an increasing construction of public buildings, particularly in Washington.

Of special importance are the increasing expenditures for the Department of Agriculture. Between 1841, where there was first appropriated $10,000 for agricultural statistics, down to and including the year 1900, the total sum appropriated for agricultural purposes was $45,000,000; while for the next eleven years ending in 1911 it reached double the sum, or $90,000,000.

Of minor importance but significant in their cumulative effect in swelling the expenditures are the disbursements for the Census Bureau which is now established on a permanent basis; the extension of the work of the Interstate Commerce Commision; the organization of the new departments of Commerce and Labor; and the increases in salaries of Government clerks. As indication of the growth of expenditures in different branches of public service, figures are given in greater detail, all amounts in millions of dollars:

	Foreign Intercourse	Expenses of Collecting Customs	Expenses of Collecting Internal Revenue	Postal Deficiency	Mint	Light Houses	Public Buildings
1870	$1.5	$6.2	$7.2	$ 2.8	$1.1	$2.6	$ 2.2
1875	3.2	7.0	4.3	6.5	1.2	2.9	8.6
1880	1.2	6.0	3.7	3.1	1.1	2.3	2.5
1885	5.4	6.5	3.9	4.5	1.1	2.3	2.5
1890	1.6	6.9	3.8	6.9	1.1	2.9	4.4
1895	1.7	6.8	3.8	11.1	.9	2.8	3.6
1900	3.2	7.5	4.4	7.2	1.3	3.6	6.3
1905	2.6	9 1	4.4	15.1	1.3	4.4	10.9
1910	4.7	10.5	5.0	8.5	1.1	6.0	18.0

For improving rivers and harbors, which are classified under expenditures of the War Department, but which properly should be differentiated, expenditures vary greatly. They are shown as follows, in millions:

	Harbors	Rivers	Total
1866–1880	------------	------------	$ 70.1
1881–1890	------------	------------	102.4
1891–1900	$52.6	$114.6	167.2
1901–1910	78.2	164.0	242.2

Postal Expenditures.—Beginning with 1841 there have been annual deficits in the budget of the Post Office Department with the exception of a few scattering years. These deficiencies have been met from the general revenue and in some years have contributed a considerable share to miscellaneous expenditures, as, for example, in 1860 when the postal deficit was nearly $10,000,000. During the past twenty years the deficit has ranged from $2,000,000 to $12,000,000, reaching its maximum $19,501,-000, in 1909. These deficits have been largely due to rapid growth of the system, particularly in the West, to the general policy of the Government in carrying newspapers and periodicals at low rates, and to the extension of rural free delivery. As the country, however, is becoming more thickly settled, and population and business is adjusting itself to the expensive framework of the postal organization, these deficits are likely to disappear.

See Appropriations, American System of; Budgets, Federal; Comptroller of the Treasury; Cost of Government in the United States; Expenditures, State and Local; Financial Policy of the United States; Financial Powers, Constitutional Basis of; Public Accounts; Purchase of Public Supplies and Property; Revenue, Surplus.

References: R. Ogden, "The Rationale of Congressional Extravagance" in *Yale Review,* VI (1897), 37–49; C. J. Bullock, "The Growth of Federal Expenditures" in *Pol. Sci. Quart.,* XVIII, 97–111; U. S. Department of Commerce, *Statistical Abstract of the United States* (annual), tables; D. R. Dewey, *Financial Hist. of U. S.* (3d ed., 1907), consult index for tables since 1790; W. H. Glassor, "The National Pension System as applied to the Civil War and the War with Spain" in Am. Acad. Pol. and Soc. Sci., *Annals,* March, 1912.

Davis R. Dewey.

EXPENDITURES, STATE AND LOCAL

Principles of Classification.—Expenditures by states and municipalities differ notably in their objects from those of the National Government. There is little outlay for military purposes; on the other hand appropriations for education, care of the sick, defectives and delinquents, and the promotion of social convenience, are large. Owing to lack of uniformity of the accounting systems of different states, counties, cities, and towns, it is impossible

to state with accuracy the total amount of expenditures in any one year for all state and local governments. In classifying expenditures it is customary in the most approved accounting to distinguish between current expenses of operation and maintenance; outlays which represent improvements of a more or less permanent character; and payments for reduction of debt. Of special difficulty is the task of securing and presenting intelligible statistics of public works and industries, such as water-works systems.

Analysis by Units of Government.—Two compilations of expenditures have been made by the census office, for all units of government—in 1890 and 1902. The expenditures in 1902 were distributed among the different units of government as follows:

	Amount	Per Cent of Total
States and Territories	$ 185,764,000	10
Counties	197,366,000	11
Cities with over 25,000 inhabitants	468,638,000	26
Cities with 8,000 to 25,000 inhabitants	82,596,000	5
Other minor civil divisions (estimated)	222,083,000	12
Total	$1,156,447,000	65
National Government	617,530,000	35
Grand Total	$1,773,977,000	100

This grand total is to be compared with $915,954,000 in 1890, when state and local expenditures constituted only 62 per cent. of the total expenditure. Local expenditure is increasing more rapidly than that of the Federal Government.

Comparing the several classes of governmental jurisdictions, local government as represented by towns and cities, takes nearly one-half, the National Government a little over one-third, the counties just over one-tenth, and the states just one-tenth, of the total expenditure.

From the above grand total certain deductions are to be made owing to duplication, arising from the payments of one government to another on account of subventions, grants, and reimbursements. This total, it is estimated, amounts to $69,646,000, leaving a net expenditure for all forms of government of $1,704,330,000. The census report does not account for these duplications in detail either by states or by objects of expenditure, so that the following analysis is based upon gross payments. As the duplications referred to amount to less than 4 per cent of the total, the error is not large and for purposes of comparison may be disregarded.

Analysis by Objects of Expenditure.—The following table shows expenditures by states and local units for the several objects of government. Unfortunately the compilation of 1890 does not use the same classification as that of 1902, but, in a third column, are added figures for a few of the objects on which the data are comparable.

	1902	1890
Legislature and legislative offices	$ 7,301,000	$ 3,988,000
Chief executive offices	2,553,000	-----------
Law offices and accounts	7,177,000	-----------
Finance offices and accounts	10,726,000	-----------
Miscellaneous, general government	18,004,000	-----------
Courts	39,935,000	18,721,000
Military and police	54,552,000	26,667,000
Fire department	38,186,000	16,424,000
Miscellaneous protection to life and property	3,736,000	-----------
Health conservation	9,461,000	3,280,000
Sewer, drainage, and other sanitation	26,418,000	-----------
Street lighting	22,919,000	11,364,000
Other highway expenditures	93,862,000	-----------
Charities	58,400,000	39,959,000
Insane	23,021,000	-----------
Penal institutions	24,426,000	12,381,000
Education	281,219,000	145,583,000
Parks and recreation	14,625,000	2,963,000
Agriculture	3,239,660	-----------
Interest	78,902,000	46,649,000
Industries	32,054,000	-----------
Investment expenses	156,000	-----------
Outlays	208,475,000	-----------
All other	19,098,000	241,274,000
Total	$1,156,447,000	$569,253,000

The foregoing table is obscure in that it does not show for what purposes "outlays" or expenditures for improvements were made. A part is for education, in the construction of school buildings, but how much is not stated. Omitting outlays, it will be observed that the largest amount is spent for education, amounting to nearly 25 per cent; for protection of life, property and health, including disbursements for militia, police, fire protection, health and sanitation, 11 per cent; for highways, including the lighting of streets, 10 per cent; and for the care of the dependent and delinquent classes of society, 9 per cent, of the total expenditure.

Specific State Expenditures.—State expenditures are largely devoted to education and the care of delinquents and dependents. Out of total expenditures of $185,764,000 of all the states there was expended in 1902 on the five principal objects of expenditure, education, care of the insane, charity, penal institutions, and courts, the following amounts and proportions of the total:

	Amount	Per Cent
Education	$61,403,000	32
Insane	20,781,000	11
Charities	17,789,000	9
Penal institutions	13,945,000	6
Courts	10,429,000	5

Under education, three-fourths go to public schools and the remainder to normal schools and higher institutions of learning. The above five objects take nearly two-thirds of the total.

The ten states with largest expenditures by objects in 1902 were as follows (000 omitted):

EXPENDITURES OF TEN LEADING STATES, 1902

(000 *omitted*)

State	Education		Insane	Charities	Penal Institutions	Courts	Total Expenditures
	Common Schools	Total					
New York	$3,737	$5,436	$4,806	$1,234	$1,831	$1,021	$22,409
Massachusetts	364	1,037	1,406	2,244	1,389	404	20,338
Pennsylvania	4,874	5,615	960	1,709	336	1,017	14,767
California	3,527	4,398	887	875	716	293	8,459
Texas	3,513	4,015	546	617	973	688	7,713
Ohio	1,830	2,205	1,353	1,123	683	480	7,494
Illinois	1,057	1,870	1,606	579	705	397	6,683
Michigan	1,976	3,088	837	364	316	184	5,910
Minnesota	1,412	2,233	52	912	737	156	5,699
Wisconsin	1,866	2,732	592	301	349	132	5,307
Percentages by Objects							
New York	12	24	21	5	8	4	
Massachusetts	2	5	7	11	7	2	
Pennsylvania	33	38	6	11	2	7	
California	42	52	11	11	8	3	
Texas	45	52	12	8	13	9	
Ohio	24	29	17	19	9	6	
Illinois	16	28	24	8	10	6	
Michigan	34	52	13	5	5	3	
Minnesota	25	39	1	16	12	2	
Wisconsin	34	51	9	6	6	2	

Comparisons drawn from the foregoing table are to be used with caution, for the statistics must be interpreted in light of administrative divisions of responsibilities between the state and local governments. Massachusetts, for example, as a state expends but a small amount for education; its towns, however, according to the system of local government undertake this function directly. Nor do the eastern states support state universities as is the common practice in the West. In the southern states public expenditures for education are more commonly made by the states and counties rather than by towns and cities. In Alabama, for example, out of total payments of $2,625,000 in 1902, less than $200,000 was made by local governments.

Specific County Expenditures.—The counties also expend large sums for education, amounting in 1902 to 18 per cent of the total. County governments, however, are preëminently concerned with the care of the roads and the maintenance of courts. For roads and bridges there was used 15 per cent; for courts, 11 per cent; and for charities, 10 per cent. The amounts in 1902 were as follows:

	Amount	Percentage
Education	$35,145,000	18
Roads and bridges	28,522,000	14
Outlays, roads and bridges	11,035,000	6
Courts	21,178,000	11
Charities	20,404,000	10
Interest	9,613,000	5
Jails	7,298,000	4
Other	64,171,000	32
Total	$197,366,000	100

City and Town Expenditures.—Apart from outlays, the most important item in expenditures of the larger cities having a population of over 25,000, is for education, amounting to 17 per cent. Local government, however, serves a wider range of needs than is provided by the other units of government, and consequently expenditures for police, fire protection, sewerage, sanitation and recreation assume relatively a greater degree of importance. This is seen in the following table, which shows the amounts for some of the most important objects of expenditure (1902):

	Amount	Percentage
Outlays	$129,955,000	28
Education	79,656,000	17
Interest	42,769,000	9
Police	39,325,000	8
Fire	27,395,000	6
Highways	20,477,000	4
Industries	20,174,000	4
Sewers and sanitation	18,669,000	4
Street lighting	15,106,000	3
Parks and recreation	12,280,000	3
Miscellaneous	62,832,000	14
Total	$468,638,000	100

Smaller Cities.—In places with a population of from 8,000 to 25,000, the same general tendency in the distribution of expenditures is found:

	Amount	Percentage
Outlays	$23,088,000	27
Education	18,926,000	23
Interest	7,184,000	9
Highways	5,567,000	7
Fire	4,936,000	6
Industries	4,497,000	6
Police	3,735,000	5
Street lighting	3,660,000	4
Sewers and sanitation	1,758,000	2
Miscellaneous	9,245,000	11
Total	$82,596,000	100

This class of municipalities does not engage so extensively in the construction of public works, and consequently the expenditures for outlays or for interest which represent payments on account of past outlays is not so great.

Minor Civil Divisions.—For the smaller units expenditures were as follows:

	Amount	Percentage
Education	$87,138,000	40
Highways	34,615,000	15
Outlays	31,451,000	14
Interest	9,771,000	4
Fire	5,854,000	3
Charities	5,388,000	2
Police	4,688,000	2
Industries	4,252,000	2
Street lighting	4,153,000	2
Sewers and sanitation	1,837,000	1
Miscellaneous	33,936,000	15
Total	$222,083,000	100

Per Capita Expenditures.—The average expenditure per person increases with the size of the unit. In 1910 the amounts were:

Population of Cities	Per Capita Expenditure
300,000 or over	$36.32
100,000 to 300,000	26.91
50,000 to 100,000	22.81
30,000 to 50,000	19.45

Cities with over 30,000 Population.—For the largest units it is possible to secure figures later than those for 1902, as the Bureau of the Census, in recent years, has published an annual report devoted to the statistics of these municipalities. These expenditures since 1902 have largely increased, as seen in the following table:

	Total	Per Capita
1902	$462,975,000	$22.50
1903	518,529,000	24.79
1904	551,061,100	25.72
1905	566,073,000	25.59
1906	600,851,000	26.29
1907	691,525,000	29.73
1908	762,181,000	32.04
1909	771,147,000	30.12
1910	839,788,000	30.74

Six Largest Cities.—The following table shows the expenditures of the six largest cities in the United States in 1910, as reported by the Bureau of the Census:

	Population	Expenses and Interest	Outlays	Total Expenditures
New York	4,766,883	$164,638,836	$75,379,758	$240,018,594
Chicago	2,185,283	43,020,096	17,257,829	60,277,925
Philadelphia	1,549,008	32,672,585	9,567,253	42,239,838
St. Louis	687,029	14,078,839	5,183,212	19,262,051
Boston	670,585	25,163,734	4,406,166	29,569,900
Cleveland	560,663	10,742,007	4,975,167	15,717,174

The expenditures of New York City in 1910 ($240,000,000) were nearly as large as those of the Federal Government thirty years previous. The per capita expenditures for the principal objects of government in the same cities in 1910 were as follows:

	General	Police	Fire	Health	Highways	Charities	School	Libraries	Recreation	Total
New York	$3.14	$3.44	$1.97	$2.61	$3.29	$ 2.09	$6.45	$0.36	$0.72	$25.11
Chicago	2.53	2.96	1.41	1.59	1.14	0.83	4.36	0.19	1.26	16.91
Philadelphia	2.93	2.94	0.96	1.54	1.74	1.70	3.92	0.24	0.52	17.07
St. Louis	2.09	2.93	1.65	1.80	2.41	1.25	4.23	0.33	0.46	17.45
Boston	3.03	3.32	2.34	3.12	3.37	2.40	6.59	0.57	1.70	27.00
Cleveland	2.16	1.50	1.36	1.46	1.63	1.07	4.79	0.51	0.47	15.35

In addition to these ordinary expenditures were disbursements for outlays, including buildings and public works. For such purposes the per capita expenditures were:

	Health	Highways	Education	Recreation	Public Service Enterprises	Total
New York	$0.56	$3.31	$0.96	$0.46	$9.59	$16.02
Chicago	1.22	2.61	1.50	.59	.85	8.03
Philadelphia	.47	2.17	.88	.51	1.19	6.19
St. Louis	.45	2.63	2.53	.10	.53	7.77
Boston	1.55	.75	1.61	.38	1.85	7.06
Cleveland	.88	3.86	1.23	.19	.78	8.89

Distribution by Objects for Cities over 30,000.—The per cent distribution of payments for 184 cities with population of 30,000 and over in 1910 by objects was as follows:

General government	11.9
Police department	13.1
Fire department	10.0
All other for protection of life and property	1.8
Health conservation	2.0
Sanitation	7.9
Highways	12.2
Charities, hospitals and correction	6.6
Schools	28.1
Libraries, art galleries and museums	1.6
Recreation	3.6
Miscellaneous	1.2
	100.0

Cities vary greatly in their percentage: for the police department the figures range from 23.3 per cent for Savannah, Georgia, to 5.3 per cent for Racine, Wisconsin; for the fire department, from 28.1 per cent for Macon, Georgia, to 5 per cent for Harrisburg, Pennsylvania; and for sanitation, 21.6 per cent for Jacksonville, Florida, to 1.8 per cent for Joplin, Missouri, and South Omaha, Nebraska. The largest percentage for charities, hospitals and correction, 16.2, was reported for Haverhill, Massachusetts, while 13 cities reported no expenses for such purposes; for schools, the largest percentage was 52.8 for Topeka, Kan.

Massachusetts per Capita (1786-1905).—No complete tables are available to show the growth of local expenditures either for states or cities as a whole over any considerable period of time. For Massachusetts, however, an intensive study has been made by Professor C. J. Bullock; according to his analysis the per capita expenditures of the state government at selected dates have been as follows: 1786, $0.88; 1825, $0.35; 1860, $0.95; 1868, $3.74; 1880, $2.19; 1905, $3.20. The fluctuations in the expenditures of Massachusetts have a striking resemblance to the course of federal expenditures.

Selected Cities per Capita (1798–1899).—For cities, Professor Fairlie has brought together in a comparative table statistics for New York, Baltimore, Boston, and Detroit. The table is reproduced as follows (000 for amounts omitted):

Year	New York		Baltimore		Boston		Detroit	
	Amount	Per Capita	Amount	Per Capita	Amount	Per Capita	Amount	Per Capita
1798	$ 108	$ 1.80	$ 64	$ 2.47				
1830	676	3.43	331	4.17				
1840	1,606	5.13	442	4.33				
1850	3,368	6.53	688	4.07				
1860	8,474	12.14	2,876	13.56				
1870	26,533	28.14	5,771	19.74	$ 3,578	$20.00	$ 205	$ 4.05
1880	29,755	24.66	6,081	18.32	12,866	28.14	710	8.93
1890	34,986	23.09	7,599	17.51	12,200	33.62	1,005	8.63
1899	93,520	27.21			24,768	44.02	3,663	12.82

These figures well illustrate the growth of governmental functions of municipalities. City life is making new demands; and the effort to meet new responsibilities and to satisfy collective wants is imposing an increasing expense.

Fairlie has also extended his investigation to a comparison of municipal expenditures in the United States and England and Wales. For public charities more is spent in England in proportion to the population than in the United States, due probably to the large amount of private charities in the latter. Allowing for differences in population, the municipal expenditures for education are more than twice as great in this country as they are in England.

New York City by Objects (1876–1896).—The growth of expenditures for New York City has been analyzed by Durand and is presented in the table opposite in which comparison with the year 1876 is made; the figures for 1886 and 1896 are based on an index number of 100 for 1876.

	1876	1886	1896
Population	100	133.6	179.7
Assessed valuation	100	128	181
Total appropriations	100	97	133
State taxes, interest, and redemption	100	66	79
State taxes	100	58	89
Interest	100	77	58
Redemption	100	42	145
Contingent appropriations	100	131.7	195.2
Police	100	118	176
Education	100	107	155
Public works	100	193	228
Fire protection and building inspection	100	149	198
Street cleaning	100	152	416
Charities and correction	100	133	173
Public parks	100	205	374
Courts	100	111	145
Donations to asylums, etc.	100	137	175
All other	100	138	203

Education.—Expenditures for education have been generous. For the common schools (public) there was a total expenditure in the fiscal year, 1911, of $46,726,929. The per capita increase in such expenditures have been progressive, more than doubling in the past forty years. The amounts expended by sections of the country are shown as follows:

	Total (*Millions*)			Per Capita		
	1871	1890	1911	1871	1890	1909
North Atlantic States	$29.8	$48.0	$149.2	$2.38	$2.76	$5.64
South Atlantic States	3.8	8.8	28.7	.63	.99	2.31
South Central States	4.9	10.7	43.9	.73	.97	2.50
North Central States	28.4	62.8	169.1	2.15	3.37	5.58
Western States	69.1	140.5	55.8	2.15	3.37	7.80
United States	69.1	140.5	446.7	1.75	2.24	4.76

The annual expenditure per pupil (in average attendance) for the United States has been as follows: 1870, $15.55; 1890, $17.23; 1909, $31.65. By geographical divisions the expenditure was for 1911:

Noth Atlantic Division	$44.27
South Atlantic Division	16.85
South Central Division	18.24
North Central Division	38.02
Western Division	59.02
United States	34.71

The low rates for the southern states are explained in part by the fact that the rural public school system has not been fully developed in that section. Moreover, the financial returns which are reported to the federal Bureau of Education, as a basis for the above compilations of total and per capita expenditure, are not complete.

Per Capita by Objects in Cities above 30,000 (1902–1908).—In order to show the trend of municipal expenditures by objects in recent years, the following per capita table is given for 147 cities having a population of 30,000 or over:

PER CAPITA EXPENDITURES OF CITIES OVER 30,000 POPULATION, 1902—1908

	General Government	Protection of Life and Property			Health Conservation	Sanitation	Highways	Charities, Hospitals and Corrections	Schools	Libraries and Museums	Recreation	Miscellaneous	Total
		Police	Fire	All Others									
1902	$1.64	$1.90	$1.33	$0.18	$0.22	$0.91	$1.72	$0.86	$3.69	$0.16	$0.60	$0.17	$13.36
1903	1.53	1.92	1.34	0.26	0.23	1.00	1.60	0.87	3.87	0.19	0.35	0.16	13.34
1904	1.35	1.96	1.43	0.26	0.22	1.09	1.70	0.89	4.04	0.19	0.39	0.23	13.75
1905	1.39	1.96	1.46	0.27	0.22	1.13	1.67	0.88	3.99	0.19	0.47	0.25	13.89
1906	1.51	2.01	1.51	0.27	0.23	1.19	1.73	0.92	4.25	0.20	0.50	0.30	14.60
1907	1.87	2.11	1.61	0.30	0.29	1.31	1.92	1.06	4.48	0.22	0.52	0.23	15.91
1908	2.05	2.27	1.72	0.31	0.30	1.38	1.83	1.18	4.71	0.25	0.58	0.26	16.83
1902–1908[1]	19	19	19	72	36	52	6	37	28	56	—3	53	26

[1] Percentage of increase.

See Appropriations; Cost of Government in the United States; Expenditures, Federal; Public Accounts; Purchase of Public Supplies and Property.

References: U. S. Bureau of the Census, *Financial Statistics of Cities* (1902–1910); special report, *Wealth, Debt and Taxation*, 1902; U. S. Department of Commerce, *Statistical Abstract of the United States*.

Davis R. Dewey.

EXPERIMENT STATIONS, AGRICULTURAL. See Agricultural Experiment Stations.

EXPERIMENT STATIONS, OFFICE OF. The office of Experiment Stations is one of the bureaus of the Department of Agriculture (*see*), established for the purpose of coöperating with the sixty-two state agricultural experiment stations actively at work on June 30, 1910, in the several states. Fifty-five of these stations receive appropriations provided for by act of Congress, and expend the money in consultation with the federal Office of Experiment Stations. The federal subsidies are expended exclusively in support of scientific research, the support of more practical work, such as the demonstration fields and agricultural surveys, being left for the states. The results of research at agricultural stations are widely disseminated through official publications and by the press, and through the extension work conducted by agricultural colleges and state departments of agriculture. Topics for research in recent years include the economic use of fertilizers, rotative cropping and maintenance of fertility of soils, crop production under dry-farming conditions, and nutritive values of farm products. See Agricultural Experiment Stations; Education, Agricultural. References: Department of Agriculture, *Annual Reports;* Office of Experiment Stations, *Annual Reports*. A. N. H.

EXPERTS IN AMERICAN GOVERNMENT

Colonial Practice.—The system of American government had its beginnings in very small communities, in which there was a close approach to social equality among those who had a right to take part in choosing public officers, and the voters all knew each other. The functions of government were simple, the duties easily performed by any intelligent man, and reëlections were usual. Though there was an upper class out of which the governors and other colonial officials were appointed, and many of the members of the assemblies were chosen, its members were rarely designated for a particular office because expert in that field of government. The colonial treasurers were not financiers; the colonial judges were sometimes not even lawyers by profession.

Post-Constitutional Practices.—The Revolution, with its broadening of the power of the people and its belief in the wisdom of the voter, prepared the way for an undermining of the former official class in the northern and middle states; no such class ever developed in the West, and in the South alone remained a body of recognized families, the members of which had a presumptive right to be nominated and eleeted to state and national office. They thus kept alive the sense of preparation for public office in general. In the Federal Government till Jackson, Presidents were chosen from experienced administrators; but up to 1865 the only Secretaries of the Treasury chosen because, primarily, expert financiers were Gallatin and Dallas; and the only expert Secretaries of War were Knox, Armstrong and Davis,

In the states, the governor is still looked upon as a sort of jack of all political trades, frequently chosen without any previous experience in public office. The heads of the necessarily technical state offices, such as treasurer, auditor, superintendent of schools, may be, and usually are, selected principally for personal and party reasons. It is much the same in municipal service; mayors are usually chosen for general reasons—rarely because of experience in city government; and the heads of city departments, such as streets, water-works, lighting, fire departments, are much more likely to have no previous familiarity with their duties than otherwise.

Real Experts.—Governments cannot get on haphazard, or depend on the uninformed judgments of newly elected officers. Hence, in national, state and municipal offices there are experts who make most of the decisions in small matters, and many in affairs of great moment; though the public may not be aware of them. Every new head of a responsible administrative post finds that he is shut in by a body of traditions and precedents, stated for him by clerks and subordinates. However anxious he may be to strike out a new path, he is bound by old contracts, hedged in by old decisions as to his powers, confined by the office's way of doing things. Many such men succumb, and in effect put a large part of their public business into the hands of a trusted clerk. In larger matters the political head of an office may take his cue from a party boss (*see*) who has permitted him to be nominated and elected in order that he may accept decisions to order. This lends unity to the administrations of some great states (notably New York) which may have a harmonious government notwithstanding the number of unrelated officers, because the will of the boss supplies decisions for the whole machinery.

Technical Experts.—In certain special fields of government service experts have been admitted ever since the Revolution. The first is war: everybody knows that whatever the American ideas of fighting with untrained soldiers, you must have trained officers and experienced constructors of weapons and ships and forts, or the country will come to grief. The first technical school in the United States was the military school of West Point founded in 1802; and it was no accident that in the last year of the Civil War practically every commander of large armies on both sides was a graduate of that national school; the experts decided the war.

From the beginning of the construction of great roads, canals and railroads, the country has recognized the value of expert engineers in public works. Nobody but a trained man could build water works or lay out and survey cities. As early as 1830 appear official civil engineers as contract employees of cities, or regularly appointed as city engineers. Many of the states had canal engineers. The construction of buildings was also recognized as an expert matter; architects were regularly employed, and there long has been a supervising architect in the Government service at Washington.

The growth of cities since the Civil War has brought out the necessity of technical experts either consulted as professional men, or made a part of the government; but it has been hard to bring either city or state government to an understanding that the larger problems of city planning (*see*), and the whole field of social legislation, equally require the administration of people especially qualified by experience and training. The great corporations, who have often informally managed city governments, provide themselves with the best of talent in their legal, engineering and operating departments; and in any rivalry of interest between them and the city governments, they usually have the best of it. Even the city law departments, where none but a good lawyer could stand the responsibility, are frequently manned by undersized men.

Experts in Governments.—Nevertheless the growth of system in private charitable and similar organizations reacts on public institutions. Insane asylums have to be under the charge of doctors; and gradually it has become clear in many parts of the country that criminals and defectives also need to be handled by experts. Such fields of government as tenement house regulation, building laws, and the care of the poor have come under specialists in many cities. Successful prison wardens, heads of reformatories and blind asylums are drawn from one state to another. The care of public institutions is becoming a profession, just as the management of public schools has gone into the hands of trained educators.

To recognize that there are experts in government as a whole is not so easy; yet why should not people not actually in office be consulted in such matters as the framing of a constitution, or an act of Congress, or a city charter? During the last twenty years a number of men have been taken out of American universities to act as expert advisers and administrators, especially in the dependencies. Professor Holland and Dr. W. F. Willoughby have been treasurers of Porto Rico. The Federal Government has assembled a body of experts in international law and diplomacy as officials and advisers in Washington. Members of college faculties have sat on important committees and in constitutional conventions. College presidents are occasionally put on commissions of inquiry in governmental matters. It seems to be admitted that students and teachers of government may render profitable expert services to the public.

The adjustment of experts to the regular system of government has its difficulties. If

they are made permanent heads of administrative departments, they expect a tenure which will give them a livelihood; but that is flatly contrary to the American doctrine of frequent elections and rotation in office. A solution which has been broadly worked out in school administration, and is not unknown elsewhere, is to have a board of laymen, elective or appointive, frequently changeable, under which serves a trained and reasonably stable administrator. Such boards are commonly unpaid, and are responsible to public sentiment in a way which cannot be expected of a permanent bureau or official. It is clear that on some terms the share of experts in American government is essential.

See ADMINISTRATION IN EUROPE; DEMOCRACY AND SOCIAL ETHICS; EXECUTIVE POWER, THEORY OF; PATRONAGE; QUALIFICATIONS FOR OFFICE; ROTATION IN OFFICE.

References: H. J. Ford, *Rise and Growth of Am. Politics* (1898), chs. v–xxviii; J. Bryce, *Am. Commonwealth* (4th ed., 1910), chs. xli, li; National Municipal League, *Proceedings*, *passim*. ALBERT BUSHNELL HART.

EXPLOSIVES, REGULATION OF. The destructive effect of modern explosives and the ease of using them for illegal purposes are such that both federal and state legislation is called in to regulate explosives. The factories are commonly by agreement or legal prescription placed at a distance from cities and towns. Under federal law the handling and shipment of explosives in interstate commerce is restricted. In 1912 the federal courts took jurisdiction over the destruction by dynamite of buildings, by putting on trial persons suspected of carrying explosives from state to state in violation of the transportation act. Under the mining laws of several states the use and handling of explosives, is carefully regulated. The simple chemical processes necessary for making explosive bombs are now so well known that many murders are carried out by that means, and large buildings are sometimes destroyed with great loss of life. There would seem to be need of legislation making penal the possession of an explosive by any person who could not show that it was intended for a legitimate purpose. See BUSINESS, GOVERNMENT RESTRICTION OF; FACTORY LEGISLATION; MINES AND MINING, RELATION OF GOVERNMENT TO. **References:** State statutes; New York State Library, *Index of Legislation* (annual).
A. B. H.

EXPORTS, TAXATION OF. See TAXATION OF EXPORTS.

EX POST FACTO LAW. An ex post facto law within the prohibition of state constitutions and the prohibition of the Federal Constitution (Art. I, Sec. ix, ¶ 3, Sec. x, ¶ 1) on the passage of such a law by either Congress or a state, is a law which in its operation makes that criminal which was not so at the time the action was performed, or provides a more severe punishment for criminal acts already committed, or changes the rules of procedure so as to make it more difficult for one accused of crime already committed to defend in a prosecution for such crime. The prohibition relates to retroactive criminal statutes providing a punishment for an act previously committed or increasing the punishment or making it more difficult for the accused to defend, but not to retroactive laws, even though criminal, which mitigate the punishment or merely change or regulate the method of procedure without imposing any additional substantial burden on the accused in making his defense. The purpose of such constitutional provisions is to prevent retroactive punitive legislation (*see* BILL OF ATTAINDER). The prohibition is broad enough to reach every attempt by legislation to impose any penalty or forfeiture of right or property on account of an act done before the enactment of the law. The term used in describing the laws prohibited might be construed generally as designating all retroactive legislation, but in view of the connection in which it is used it is technically restricted to criminal statutes. Other retrospective statutes are unconstitutional only when they impair the obligations of a contract or deprive some person of vested rights. See RETROSPECTIVE LEGISLATION. **References:** T. M. Cooley, *Constitutional Limitations* (7th ed., 1903), 372–383; Calder *vs.* Bull (1798), 3 *Dallas* 386; Kring *vs.* Missouri (1882), 107 *U. S.* 221; Thompson *vs.* Utah (1898), 170 *U. S.* 343. EMLIN MCCLAIN.

EXPOSITIONS, PUBLIC AID TO. The favorite colonial gathering was militia training day, the public purpose of which was lost in eating and drinking and sports. That place has been taken by the county fair, magnified in many states into an annual state fair, for which the state government sometimes make a small appropriation. In New York State for a long time certain fees paid by the race tracks were transferred to the county fairs; and when gambling on the race tracks was prohibited, June 15, 1910, the state agreed to continue to support the county fairs by direct appropriation.

The same principle of public interest has been extended to national or regional expositions. The first was the international exhibition held in New York in 1852 to which the Federal Government made no appropriation. The Centennial Exposition of 1876 was practically a public affair: though carried on by a stock company, it received a grant of $1,500,000 from the Federal Government, besides $73,500 for a government exhibit, and many states appropriated liberally for buildings and exhibits.

For the Chicago World's Fair of 1893, the United States coined 5,000,000 half dollars as a subsidy and spent about $2,300,000 in exhibits, buildings, etc.; and the states spent about $5,000,000. Such exhibitions now became a habit and so did the appropriations. In 1895 a Cotton States and International Exposition was held at Atlanta to which the Federal Government contributed through an appropriation of $200,000. It spent on the New Orleans exposition of 1884 $5,011,795; $500,000 on the Buffalo Pan American in 1901; $250,000 on the Charleston Exposition of 1902; $5,500,000 on the St. Louis Louisiana Purchase Exposition of 1903, besides a loan (repaid) of $4,600,000. The not very significant Jamestown Tercentennial Exposition of 1907 cost the Federal Government $1,550,000, besides an unpaid loan of $900,000. The Lewis and Clarke Portland Exposition of 1905 got $475,000; the Alaska Yukon Pacific Exposition of 1909 in Seattle cost the Government $600,000; for the San Francisco Exposition of 1915 to celebrate the completion of the Panama Canal no appriation has been made up to 1913.

In almost all these expositions, most of the states have officially coöperated by providing for the construction of a state building on the exposition grounds; by sending state exhibits of products or educational systems; and by appointing state commissioners.

The Federal Government and some of the states have also appropriated money for foreign world's fairs, as 1867 in Paris; 1873 in Vienna; 1898 in Paris; and federal commissioners have been appointed (usually at their own expense) to attend these fairs. The Federal Government has sometimes sent Government exhibits in addition.

The cities in which these expositions have been held have also, in many cases, made appropriations for the fairs held within their limits; and in some cases for fairs in other countries. They have also erected buildings which remained after the show was over—as the Art Museum in Philadelphia in 1876.

The fairs are educational; they stimulate improvement of agriculture, manufactures and other industries; they make cities attractive; sometimes increase real estate values; and are clearly for the public interest.

The constitutional basis for appropriations by the Federal Government is not so clear, except on the broad ground of "general welfare" which is allowed by no great commentator; or on the narrower basis that Congress may do for the general welfare whatever can be done by appropriations, held by Story and some other writers. It is difficult to see by what authority Congress appropriates money to any expositions except those distinctly national in character.

See EDUCATION AS A FUNCTION OF GOVERNMENT; MUSEUMS, PUBLIC; PARKS AND BOULEVARDS; PUBLIC BUILDINGS, FEDERAL, STATE AND MUNICIPAL.

References: H. J. Kimball (director general) *Report on the International Cotton Exhibit* (1882); J. Bentley, *Hist. of the Centennial Exhibition* (1876), *The Exposition* (periodical on South Carolina Interstate Exposition, 1901); Lewis and Clark Exposition, *Official Catalogues* (1905); Alaska Yukon Pacific Exposition *Reports*, 1910.

ALBERT BUSHNELL HART.

EXPOUNDER OF THE CONSTITUTION. A title bestowed upon Chief Justice John Marshall (*see*), because of his efficient service in defining and interpreting the Constitution of the United States. The title was also won by Daniel Webster in 1830 by his reply to Hayne in the Senate debate on the "Foote Resolution" (*see*), proposing to check the indiscriminate sale of public lands. O. C. H.

EXPRESSED POWERS. In construing the Federal Constitution the government provided for is said to be one of enumerated as distinct from general powers; and the enumerated powers may be designated as expressed, while the powers necessary and proper to be employed in exercising such expressed powers are spoken of as implied. There seems to be no occasion for any distinction between expressed and implied powers in the construction of state constitutions, for in them the grant is of the general powers of government without specific enumeration. See CONSTRUCTION AND INTERPRETATION; IMPLIED POWERS; LAW, CONSTITUTIONAL, AMERICAN; NECESSARY AND PROPER.

E. McC.

EXPRESS SERVICE, REGULATION OF

Origin and Development of Express Service.—Companies separate from the railroad corporations conduct the express business in the United States, because the railroads at the beginning did not find it profitable to collect, transport and deliver small packages.

The first express company was started in 1839 by Wm. F. Harnden of Boston, who organized a service between Boston and New York and later extended it to Philadelphia. In 1840, Alvin Adams established a competing company, and in 1854, the Harnden, Adams and one other company were consolidated to form the Adams Express Company. The American Express Company was established in 1850 by the consolidation of three smaller companies,

and later absorbed the Merchants' Union. Wells, Fargo and Company, also a consolidation of several predecessors, was founded in 1852. The United States Express Company dates from 1854; the Southern Express Company from 1886, the latter company now being controlled by the Adams Express Company. In addition to these companies there are now in operation the National Express Company, controlled by the American, and certain smaller private companies.

There are also six express companies controlled by railroads—the Globe Express by the Denver and Rio Grande; the Southwestern and International Express Company by the El Paso and Southwestern Railroad; the Canadian Express Company by the Grand Trunk Railway; the Pacific Express Company by the Missouri Pacific, Wabash and Union Pacific Railroads; the Northern Express Company by the Northern Pacific Railway; and the Great Northern Express Company by the Great Northern Railway.

The express business is, however, dominated by four big companies. The American Express Company operates over 50,800 miles of railway lines mainly in the East and Middle West; the Adams over 35,000 miles of line mainly in the East and Middle West, and controls the Southern Express Company with contracts over 31,400 miles in the southern states; the United States Express Company over 30,400 miles of line in the East and Middle West; and Wells, Fargo and Company over 61,800 miles in the West and Southwest.

Business Organization of Express Service.—Three of the four large companies—the Adams, American and United States—and one of the lesser companies, the National, retain their original organization as unincorporated associations. They are limited partnerships with capital stock divided into shares without stated par value. Wells, Fargo and Company and most of the other companies have the corporate form of organization.

The capitalization of the seventeen leading express companies, in 1907, was $68,853,200, an amount suprisingly small in comparison with the large annual gross earnings. The capital, in 1909, of the four large companies amounted to $48,000,000; their gross earnings were over $100,000,000. There is an intimate corporate inter-relationship between express companies, and also between express companies and the railroads. The intercorporate stock ownership of express eompanies, in 1909, amounted to $11,618,000, and in addition $20,600,000 of express stoek was held by railroad companies. The express companies own $22,200,000 of railway stock and $12,300,000 of railway bonds. This goes far to explain the willingness of the railroad companies to leave the express business carried over their lines in the hands of outside concerns.

Business Relations Between Express Companies and Carriers.—Each railroad makes a contract, in most cases an exclusive one, with an express company definitely defining the relations of the two companies. The railroad company usually agrees: (1) to provide facilities for the transportation of express goods and merchandise on passenger trains; (2) to turn over to the express company all package freight handled upon passenger trains; (3) not to grant more favorable terms to any other express company. The express company ordinarily binds itself: (1) to submit its rates and rules to the approval of the railroad company; (2) to pay a stipulated percentage—usually from 50 to 60 per cent—of its gross receipts to the railroad company; (3) to allow the railroad company to examine the accounts of the express company; (4) to assume all risk of loss or damage to its persons or property in transit; (5) to carry railway express matter free of charge.

When the express business is carried by a steamship line, a special contract is not always made by the express company and the carriers, the express company often paying the rates of a regular shipper. In some instances, however, contracts are made by the express company with the water carriers similar to the contracts made with railroads. In the international express business, the express company pays current ocean rates the same as other shippers.

The Express Service.—While express traffic consists mainly of parcels, it may also include perishable commoditites of many kinds, and livestock may be shipped by express. The transportation of bullion and coin is largely intrusted to express companies; and, in addition to their services as carriers, express companies do a banking business by issuing money orders, travellers checks and letters of credit. Express companies also act as collecting agents, taking packages for shipment C. O. D. Likewise, most express companies do an "order and commission business." Commodities of all kinds are purchased for distant buyers; and, similarly, commodities are received from shippers for transmission to, and sale upon, a distant market.

Classification of Express Traffic.—All large express companies have adopted the "official express classification," which divides articles into two general classes—"merchandise" and those in the "general-special" class. "Merchandise" comprises the general package freight of great variety; the "general-special" class includes various enumerated commodities, among which may be mentioned eggs, oysters and dairy products. Some express companies have an additional special class of traffic for the purpose of giving commodity rates to particular commodities between certain designated points.

Express Traffic and Rates.—Express charges are based, in general, upon weight and dis-

tance. The tariff book states the rates per 100 lbs. between shipping points located in specified sections of the country. For the most part, the tariffs now in force apply to merchandise shipped between offices in Section 1, comprising points in the New England and middle states and the Virginias, and points in Section 2, which comprises the states of the Middle West as far south as Oklahoma and as far west as Wyoming. By consulting a skillfully constructed table, the agent is able easily to ascertain the rate per 100 lbs. between any two shipping points. The rates on packages weighing less than 100 lbs. are fixed by a table of "graduated" charges. For instance, when the rate between two points is $1.00 per 100 lbs., the charge for 1 lb. is 25 cents, 5 lbs., 40 cents, 15 lbs. 50 cents, etc. When traffic is shipped over the lines of two or more express companies not having through rates, the charges are "graduated" by each company, the entire charge being the sum of the graduated rates. In general, it may be said that the express tariffs are complicated and in many cases are extremely high. Under the powers given by the act of 1906, the Interstate Commerce Commission is gradually simplifying and coördinating express tariffs and effecting large reductions in rates.

Public Regulation of Express Companies.—The Hepburn Act of 1906 gave the Interstate Commerce Commission the same power over express companies that it had over railroads. Under this law, the commission, upon complaint, could fix maximum interstate express rates subject to review by the United States courts. All express tariffs were to be filed with the commission and no change could be made in a rate except upon thirty days notice. The commission was also given power to prescribe a uniform system of accounts, and to examine the books of express companies to determine whether the accounts were being kept as prescribed.

The Mann-Elkins Act (*see*) of June 18, 1910, gave the Interstate Commerce Commission additional powers over express and other interstate carriers. The commission now has the power to fix maximum rates upon its own initiative, subject only to review by the United States commerce court or, upon an appeal therefrom, by the Supreme Court. The commission can change the classification of express traffic and can suspend any proposed increases in rates pending an investigation and determination of their reasonableness. The burden of proof to show that the proposed increased rates are just and reasonable is placed upon the express company.

Thirty-four states have subjected express companies to the regulation of a railroad, corporation, or public utilities commission. The powers vested in these state commissions as to the regulation of intrastate express business is similar to that possessed by the Interstate Commerce Commission over traffic among the states.

The states have accomplished but little in regulating express companies, but, in 1911, the Interstate Commerce Commission began a thorough inquiry into the business, and the effective regulation of the entire service seems probable.

See Bill of Lading; Commerce, American Movement of; Discrimination in Railroad Rates; Interstate Commerce Legislation of; Parcel Post; Railroad Commissions, State; Rebates in Transportation; Transportation by Government.

References: E. R. Johnson and G. G. Huebner, *Railroad Traffic and Rates* (1911), II, Part VI, chs. xxxvii–xliii; U. S. Census Bureau, *Special Report on Express Business in the United States* (1908); Interstate Commerce Commission, *First Annual Report on the Statistics of Express Companies in the United States for the Year ending June 30, 1909; Am. Year Book, 1910*, 53, and year by year.

Emory R. Johnson.

EXPULSION FROM THE UNITED STATES.—Every government has the ultimate right to refuse entrance to foreigners; or, having received them, to order their departure. The reasons for such action may be derogatory to the dignity of other nations concerned; but the right is indisputable. In time of war subjects of the enemy may be removed, as 30,000 Germans were from Paris in 1871; and in 1798, by the Alien Enemies Act the President of the United States was authorized to remove alien subjects of hostile countries at his discretion; nevertheless in the ensuing war with France none were expelled.

In the same year, 1798, the so called Alien Friends Act authorized the President to notify any alien whose presence he thought was undesirable, to leave the country; and if he refused, he might be imprisoned. No alien was expelled under this act, which in a few years expired.

At present the United States has provided by statute for the expulsion only of aliens who have entered the country contrary to the immigration acts. Anarchists, and usually convict laborers, may be expelled whenever found; diseased contract laborers and insane persons, within three years after their entrance (*see* Immigration). Since the immigration of the Chinese has been absolutely prohibited, any Chinese who has entered the country in violation of the statutes may be forthwith expelled. The prohibition does not apply to Japanese subjects.

Criminals, if citizens, or aliens resident, cannot be expelled for a crime; though an alien, and perhaps also an American citizen, who has committed a crime and then has come to this country may be surrendered on extradition (*see*) proceedings. There have been a few cases

in which foreign criminals have been given up without extradition, which is virtually expulsion.

Banishment from their country was a penalty applied to the loyalists in the colonies and new states during the Revolution; but the United States has never expelled its own citizens. The state courts frequently suspend sentence on criminals on condition that they leave the state. Paupers and lunatics may be, and frequently are, carried without their consent from one state into another. Since the Fourteenth Amendment (*see*) no state can by its act deprive a citizen of the United States of his citizenship or its legal privileges.

See ALIENS, CONSTITUTIONAL STATUS OF; CITIZENSHIP IN THE U. S.; CIVIL RIGHTS, CONSTITUTIONAL GUARANTIES OF; DUE PROCESS OF LAW; HABEAS CORPUS; LIBERTY, LEGAL SIGNIFICANCE; PRIVILEGES AND IMMUNITIES; IMMIGRATION; PEONAGE.

ALBERT BUSHNELL HART.

EXPULSION OF MEMBERS OF LEGISLATIVE BODIES.—The right of a legislative body to expel its members for certain grave offenses is considered necessary. In the House of Commons, this power has the sanction of long usage and has frequently been exercised. Though expulsion vacates the seat of the member, it does not create any disability to serve again in the same parliament. In the early years of George III, John Wilkes was several times expelled and as promptly reëlected. In 1882 the House expelled Mr. Bradlaugh but when he was immediately reëlected, no question was raised as to the validity of the return. The precedent thus set has since been followed without variation.

The Constitution of the United States (Art. I, Sec. v, ¶ 2) and those of most of the states expressly provide that either house may expel its members by a two-thirds vote of the elected members, or, as is the case in Vermont, by a majority vote of a quorum. Some constitutions provide that a member cannot be expelled a second time for the same offense, or except for theft, perjury, etc. In some, however, a member expelled for corruption is ineligible thereafter to membership in either house. Three constitutions declare that a member cannot be expelled for any cause known to his constituents before the election. In a few, the reasons for expulsion are required to be entered on the journal together with the names of the members voting.

The causes for which a member may be expelled are not usually specified in the constitution, it being left to the discretion of the house to determine in each particular case whether the act complained of is one which justifies so severe a punishment. Members have been expelled from the House of Commons for rebellion, forgery, perjury, fraud, corruption, unbecoming conduct, contempts against the House, libel, and the like. Members have been expelled from both the Senate and the House of Representatives of Congress for treason against the United States, and occasionally from the state legislatures for various offenses.

See REMOVAL OF PUBLIC OFFICIALS.

References: L. S. Cushing, *Law and Practice of Legislative Assemblies* (9th ed., 1907), §§ 3, 625–629; A. C. Hinds, *Digest and Manual of the Rules, etc., of the House of Representatives* (1908), 545; F. J. Stimson, *Fed. and State Constitutions* (1908), § 276; T. E. May, *Parliamentary Practice* (11th ed., 1906), 55.

JAMES W. GARNER.

EXPUNGING RESOLUTION. A resolution adopted by the Senate, January 16, 1837, by a vote of 24 to 19, to expunge from its journal a resolution passed in 1834 censuring President Jackson for his removal of the Government funds from the United States Bank. See JACKSON, ANDREW; JACKSON, ANDREW, CENSURE OF.

O. C. H.

EXTRADITION, INTERNATIONAL. Extradition is the act by which a nation delivers up an individual, accused or convicted of an offense outside of its own territory, to another nation which demands him, and which is competent to try and punish him. A nation is not required to surrender for punishment elsewhere a person who has committed an offense upon its own territory. By the legislation of some countries, however, citizens or subjects are held amenable to the penal laws for acts committed outside of the national territory; and to a certain extent even foreigners are held answerable for acts so committed. The definition given above is broad enough to include a demand in either of those cases; but the United States, in its practice of extradition, treats offences as essentially local, and refuses to surrender fugitives unless it be shown that the crime was committed in the territory, actual or constructive, of the demanding government.

Extradition, while not a perfect duty in each particular case, is considered a duty in the sense that nations are not justified in refusing to enter into extradition treaties. Except in the case of Arguelles, a slave-trader from Cuba, in 1864, the Government of the United States has always acted upon the supposition that in the existing state of legislation the President is not authorized to surrender fugitives from justice in the absence of a treaty.

Extradition is a national act. The states of the United States have no power to grant it, although this formerly was often done under unconstitutional local statutes. Citizens may be delivered up unless they are excepted from the operation of the treaty. A fugitive cannot, without the consent of the surrendering government, be tried for an offense other than that for which he was delivered up, till he has

had an opportunity to return to the jurisdiction of that government. The irregular recovery of a fugitive is not generally treated as a ground for his discharge unless complaint is made by the government whose territory was violated. Political offenders have since the eighteenth century been regarded as exempt from extradition unless an express agreement requires their surrender.

See Aliens, Constitutional Status of; Comity, International and Interstate; Domicile and Residence; Expatriation; Expulsion; International Law, Private; Protection to American Citizens Abroad.

Reference: J. B. Moore, *Treatise on Extradition and Interstate Rendition* (1891).

John Bassett Moore.

EXTRADITION, INTERSTATE. The extradition of fugitives from justice, a matter of comity or of treaty regulation between independent nations, is declared by the Federal Constitution to be a binding obligation upon the part of the states of the Union (Art. IV, Sec. ii, ¶ 2). In 1860, however, this obligation was declared by the Supreme Court to be one the fulfilment of which by the states can not be compelled by the Federal Government (Kentucky *vs.* Dennison, 24 *Howard* 66); and, since that date, there have been a number of instances in which the surrender of fugitives from the justice of one state has been refused by the asylum state. In general, however, upon proper demand being made, extradition has been granted Before surrender, it is the duty of the executive of the asylum state to determine whether in fact the person asked for is a fugitive from the justice of the demanding state; and though the governor cannot be compelled to act, when he has acted the propriety of his action may be inquired into by the courts.

According to international practice, a person surrendered may be tried only for the offense for the commission of which he has been extradited. As between the states of the Union, however, the accused, when brought back within the jurisdiction of the state from which he has fled, may be tried for any offense that he may have committed against the laws of that state. The right to obtain extradition of a fugitive from justice is one which belongs to the state whose laws have been violated. The fugitive himself derives no federal right, privilege, or immunity from the constitutional provision. If, therefore, he be seized without warrant of law and forcibly abducted from a state in which he has sought refuge, and taken back to the state from which he has fled, no right secured to him by the Federal Constitution has been violated, and, therefore, the federal courts will afford him no relief. In such cases the laws of the state where the seizure and abduction have occurred have, of course, been violated, but this is not a matter of federal concern (Mahon *vs.* Justice, 127, *U. S.* 700). So, also, no federal right is violated because the one surrendered has been given no opportunity to test the legality of the proceedings by which he has been seized and extradited.

See Fugitives from Justice; Interstate Law; International Law, Private.

References: J. B. Moore, *Extradition and Interstate Rendition* (1891), *Digest of International Law* (1906); *House Docs.*, 56 Cong., 2 Sess. (1906), 551.

W. W. Willoughby.

EXTRA SESSION. A session of a legislative body at another time than that regularly fixed by the constitution or laws. See Congress; Sessions of Legislative Bodies.

W. E. D.

EXTRATERRITORIALITY. **Basis.**—Jurisdiction, the right to exercise state authority and state law, is usually regarded as territorial. Strictly viewed this would place all persons and things within the territory of a state under its laws and jurisdiction, and would exclude the operation of all other laws. In practice there are exceptions to such exclusive exercise of state authority and state laws.

The exceptions usually appear in relation to (1) sovereigns; (2) official representatives of the sovereign or state, as ambassadors, ministers, etc.; (3) certain officials engaged in special functions by authority of one and consent of another state, as consuls; (4) public armed forces passing through a foreign territory; (5) public vessels and their personnel; (6) Americans or Europeans in certain eastern and Asiatic states.

Different theories have been put forward in explanation of the special treatment accorded to the above classes, but whatever the basis, extraterritoriality is the term, ordinarily used to designate immunity from local jurisdiction. This immunity may extend to persons and to things and the degree of immunity may vary according to the official character, or according to the state.

Customary immunities are granted to certain official persons in whatever foreign state they may chance to be. To other persons the immunities granted may vary according to conventional agreement.

Sovereigns.—A sovereign or the head of a state as representing the dignity of the state is, when within the territory of a foreign state, accorded complete exemption from local jurisdiction. His person is inviolable. He is not liable to civil, criminal, customs, and other laws. His suite is ordinarily regarded as similarly exempt. The goods which he brings for his own use are not subject to customs and similar duties. The aim is to interfere as little as possible with his freedom of action. If a sovereign should abuse his immunities

the remedy is to request him to leave, or in an extreme case to expel him from the country. A sovereign may travel incognito and is then entitled only to the immunities due to the character which he has for the time assumed. He may at any time, however, reassume his sovereign character and is then entitled to full immunities (Vavasseur *vs.* Krupp [1878], *Law Rep.* 9 Ch. Div. 351).

Official Representatives.—Official representatives of the sovereign such as ambassadors, ministers, etc., are entitled to immunities which are on account of their representative character similar to those accorded to the sovereign and generally include inviolability of person, exemption from criminal and civil jurisdiction, immunity of domicile, a limited right of asylum, freedom of worship, and jurisdiction over official personnel and domicile.

Consuls.—Consuls who are appointed to care for the material interests of a state when granted an exequatur (*see*) by a receiving state are granted such immunity from territorial jurisdiction as will enable them to perform their functions. These usually include exemption from taxation if wholly engaged in consular business, exemption from military and witness duty, though testimony may be taken at the consulate, and inviolability of office and archives.

Forces.—Public armed forces of one state, granted permission to pass through another state, are during their passage under the sole command of their own officers.

Vessels.—Public vessels, when within the territorial waters of a foreign state, are granted the fullest exemption from local jurisdiction consonant with the safety of the port. The vessel will be subject to the necessary harbor regulations as to anchorage, etc. The exemption extends to the boats, rafts, etc., which belong to the public vessel. The personnel of the vessel, while in the proper performance of their functions and in all affairs affecting only the internal economy of the vessel are exempt from local jurisdiction. The common statement is that when the public vessel of one state is in the waters of another its decks are foreign territory and the local authorities can exercise no jurisdiction there. It is not considered proper to grant asylum on board a public vessel, but if a refugee is received on board and is not given up, the only action that may be taken is to request the vessel to withdraw or in an extreme case to expel the vessel.

Eastern States.—In certain eastern states special exemptions have been granted to Americans and Europeans. These exemptions were granted comparatively early at the time of the more permanent establishment of relations between the eastern states and European states. Article IV of the treaty of 1830 between the Ottoman Empire (Turkey) and the United States provides as to citizens of the United States of America "even when they may have committed some offence, they shall not be arrested and put in prison by the local authorities, but they shall be tried by their Minister or Consul, and punished according to their offence, following in this respect the usage observed towards other Franks." "The observed usage towards other Franks" which had been developed through many years was formulated in "capitulations" (*see*) in which Turkey had granted certain exemptions in regard to arrest, entry of houses, taxation, right to hold property, etc. The "capitulations" were based on the differences in the civilization, religion, customs, methods of procedure and punishment for offences.

The principle applied in Turkey was extended on the same grounds to other states where the civilization was non-European, as to China, Morocco, Muscat, Persia, Siam, and to Japan till within the last decade of the nineteenth century. The Japanese treaty of 1894 becoming operative in 1899 put an end to the exercise of extraterritorial rights by the United States in Japan which then became a member in full of the family of nations.

Jurisdiction.—The existence of extraterritorial rights made necessary the establishment of some system of jurisdiction which should exercise authority over the persons and places not under the local authority. There developed a system of extraterritorial jurisdiction. Under this system the special jurisdiction was usually conferred upon the consuls who, in addition to their regular functions, were entrusted with jurisdiction in the first instance in civil and criminal matters. In grave matters they were to refer questions to higher authorities of their own state or to send the accused home for trial. As the power of the consul was thus enhanced, his dignity gained and his exemptions broadened until these approached the dignity and exemptions of a diplomatic agent and the consular office took on a character unlike that in the European states where the office was mainly concerned with business affairs. From claims to jurisdiction over their own states they extended their claims to the right of protection of other strangers and this was generally conceded.

Special Courts.—Elaborate judicial systems were developed by certain European states in some of the Asiatic states. The British supreme consular court in Turkey by an Order in Council of 1873 is to consist of judges of legal training. It sits at Constantinople and has a limited civil and criminal jurisdiction, both original and appellate. Appeal from this court may be had in certain civil cases to the Privy Council.

The United States Congress in 1906 established "the United States Court for China." This court has "exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may now be exercised by United States

consuls and ministers by law and by virtue of treaties between the United States and China" (U. S. *Comp. St. Supp.*, 1909, 1045).

The jurisdiction is limited to civil cases involving more than $500 and to criminal cases involving a penalty in excess of $100 or sixty days imprisonment. This court has appellate jurisdiction in the cases before the ordinary consular courts. Appeal from "the United States Court for China" may be had to the "United States Circuit Court of Appeals of the Ninth Judicial Circuit," and from this court to the Supreme Court of the United States.

Mixed Courts.—Another field of exercise of extraterritorial jurisdiction is in the mixed courts in Egypt which were established by concurrence of the Powers in 1875. There are three courts of first instance (Alexandria, Cairo, Zagazig). There is also a court of appeal at Alexandria. The judges, of whom a part are natives but a majority are foreigners, act for the most part on civil cases involving foreigners. As the law of a single state would not be adaptable, there has been evolved for this court a special code.

With the extension of membership in the family of nations and the adoption of recognized standards of legal procedure, extraterritorial courts will tend to disappear. The exemptions and immunities granted under the doctrine of extraterritoriality to sovereigns and diplomats and in some other cases in order to facilitate international negotiations, are already well defined and are conducive to the maintenance of good relations, and will tend to persist while such officers are maintained.

See ASYLUM; CAPITULATIONS, TURKISH; DIPLOMACY AND DIPLOMATIC USAGE; EXPATRIATION; INTERNATIONAL LAW, PRIVATE; LEX LOCI; NATIONALITY; PROTECTION TO CITIZENS ABROAD; SOVEREIGNTY; STATES, EQUALITY OF; TERRITORY IN INTERNATIONAL LAW; VESSELS.

References: J. B. Moore, *Digest of Int. Law* (1906), II, 593–883; F. Van Dyne, *Our Foreign Service* (1909), 83, 137; H. Jenkyns, *British Rule and Jurisdiction Beyond the Sea*, (1902), 159.

GEORGE G. WILSON.

F

FABIAN POLICY. A term used by General Washington's critics, particularly in Congress in the autumn of 1777, to characterize Washington's policy of delay and his refusal to risk an open decisive battle. See AMERICAN FABIUS.

O. C. H.

FABIAN SOCIALISTS. This term applies, strictly, to the members of the Fabian Society of English Socialists, which dates from 1888, but it has come to include any one who, in general, takes the Fabian point of view and supports the Fabian policy. This policy is distinctly that of opportunism. Instead of denouncing the existing government and refusing to have anything to do with it, the Fabians propose to use it for the furtherance of their ends. Instead of refusing to unite with other reform organizations, the Fabians unite with every organization, and identify themselves with every movement which aims toward the promotion of their reforms. Instead of opposing church, religion and philanthropy, they sieze every opportunity to make church, religion and philanthropy socialistic. Instead of holding meetings of their own, their chief endeavor is to find opportunities to speak in meetings called for other purposes, and to take every means to have the Fabian point of view and programme presented on every possible occasion.

Their programme is frankly socialistic, though their policy of opportunism is to take any kind of a partial reform whenever they can get it, provided it tends toward socialism. It is not a distinctly working-class movement, but rather a movement for the working class by a group of speakers, writers, dramatists, and artists. Except that their ultimate purpose is frankly and avowedly socialistic, it would be difficult to distinguish them from other radicals, since they take the same position upon the immediate questions of practical politics.

See CHRISTIAN SOCIALISM; SOCIALISM; SOCIALISM, MUNICIPAL; SOCIALISM, STATE.

References: G. B. Shaw, Ed., *Fabian Essays on Socialism* (1890); J. R. MacDonald, *Socialism and Government* (1907); H. G. Wells, *New Worlds for Old* (1908); Fabian Society, *Fabian Tracts* (1899), 1–107, *Fabian Essays in Socialism* (1890).

T. N. CARVER.

FACTORY LEGISLATION. State interference in industrial matters, or the enforcement of uniform conditions in factories by legislation, is a valid exercise of the police power, since industrial efficiency is not identical with commercial success; and economy effected by working long hours, employing cheap labor, and providing inferior conditions may give an unfair advantage in some industries. It is, therefore, desirable that restrictive legislation should be adopted by competing states at the same time and in the same degree.

Factory laws differ widely in the different American states, varying from nothing at all to a fairly substantial code. As a whole they are elementary and very imperfectly observed. They relate to conditions of safety and sanitation, including fire escapes, guarding of dangerous machinery, removal of dust and injurious gases, adequate provision of light and ventilation, suitable water for drinking and for humidifying the atmosphere, condition of toilets, etc. Closely allied to factory regulations are laws regarding steam boilers in factories and other buildings; locomotive and marine engines and boilers; railway safety appliance acts; laws regulating mines, such as operation, ventilation, means of exit, methods of working, setting and firing of blasts, use of safety lamps, and general inspection and supervision; laws relating to building operations and employment in compressed air; laws requiring the provision of appliances for rendering medical and surgical aid in factories and mines; the reporting of industrial accidents and occupational diseases.

See EMPLOYERS' LIABILITY; INDUSTRIAL INJURIES; INSPECTION AS A FUNCTION OF GOVERNMENT; LABOR, PROTECTION TO; MANUFACTURING, RELATION OF GOVERNMENT TO; OCCUPATIONAL DISEASES.

References: *Am. Labor Legislation Review*, I, No. 2 (1911); J. and I. Andrews, Eds., "Scientific Standards in Labor Legislation" in *ibid*; *Journal of Industrial Safety* (1911–12); "Risks in Modern Industry" in Am. Acad. of Pol. and Soc. Sci., *Annals*, XXXVIII, No. 1 (1911); J. T. Lincoln, *Factory* (1912); S. M. Kingsbury, *Labor Laws and Their Enforcement* (1911); L. D. Clark, *Law of the Employment of Labor* (1911); *Am. Year Book, 1910*, and year by year.

C. F. GETTEMY.

FAIR WAGE. A "fair wage" as popularly understood, is one which allows a workman to maintain the standard of living of his class in his locality. The term is used, also, in contracts for public work in England and

Canada to designate what is known as the "prevailing rate of wages." In the United States, a "fair wage" often means the rate of pay of the most liberal private employers. See LABOR, HOURS OF; LABOR, RELATION OF THE STATE TO; WAGES, REGULATION OF. Reference: F. T. Carlton, *Hist. and Problems of Organized Labor* (1911), 190–193. J. R. C.

FAIRS, AGRICULTURAL. Rural and agricultural fairs are of many types, some not connected with governmental regulation or support. Some of them, particularly in the Old World, are bazaars for the sale of produce and exchange of commodities. Others are distinctly educational, designed to interest the people in the objects that they display and to develope the wealth and resources of the state. In the United States the fairs are founded on the latter basis—to serve as agencies for the public good; they are, therefore, for the most part, under more or less close governmental supervision. The American agricultural fair appears to have been projected distinctly as an educational institution. This was the conception of Washington, who, in 1796, if not earlier, urged that such exhibitions be held. Governor DeWitt Clinton of New York made recommendations in his speech to the legislature in 1818 looking toward the organization of agricultural societies and the awarding of premiums for articles and products of excellence, and he desired to have records kept of the methods employed in growing the products and essays prepared on the best practices in farming. Fairs were held in Washington in 1804 and 1805, but appear then to have been discontinued. Elkanah Watson, in 1807, exhibited two merino sheep in the public square at Pittsfield, Massachusetts, for the purpose of extending an interest in agriculture; and he thereafter developed a plan of fairs of national scope, all knit togethehr, as a single enterprise. Governor Clinton's suggestions bore fruit, the New York legislature appropriating $10,000 for the year 1819 to be distributed among the several county agricultural societies, the societies themselves to raise a like sum by voluntary subscription. A state Board of Agriculture was formed, to serve as a head and clearing-house for the societies. Thus began a movement for county and state fairs in New York that long had a powerful influence.

Through the middle years of the last century, the fairs and similar meetings were perhaps the best gatherings for reaching the rural people. Sheep-shearing, plowing-matches and other forms of contest were sometimes held. The questions of the day were presented in set orations by well-known public men. With the rise of other means of publicity and education, the relative importance of the fairs began to decrease, although the fairs have never lost their influence for good. The agricultural press became important, great agricultural organizations arose, the colleges of agriculture (*see*) and the experiment stations (*see*) were founded, railroads extended rapidly and cities grew amazingly. In all this change the fair often lost itself and frequently drifted away from its former position, even though holding to the earlier practices and forms. It tended to become a show rather than a real exhibition or contest, and to compete for public favor by many extraneous and even questionable practices. The horse-racing introduced speculative and gambling features, and the liberality of premiums for certain groups of live-stock and other exhibits encouraged a class of semi-professional exhibitors that go from fair to fair. There is now a distinct revival of interest in the fairs as serving the educational and social needs of rural communities. They should have close inspection and regulation by responsible persons representing the Government, and it is desirable that the state should bear at least part of the expense in order that this regulation may be exercised.

See AGRICULTURE, RELATIONS OF GOVERNMENT TO; EXPOSITIONS, PUBLIC AID TO.

L. H. BAILEY.

FAITH AND CREDIT. Aside from federal constitutional provision there would be no legal obligation upon the states of the Union to give recognition and enforcement to the public acts, records, and judicial proceedings of one another. By the first section of Article IV of the Constitution it is, however, provided that this shall be done, and furthermore, that Congress may prescribe the manner in which these acts, records, and proceedings shall be proved and the effect thereof. In pursuance of this authorization Congress has, by statute, provided that the authentication of state statutes shall be by the seal of the state, and that of records and judicial proceedings by attestation of the clerk and seal of the court, and certificate of the judge that the attestation is in due form. When thus proved it is declared that they "shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken." (1 *U. S. Stat. at L.* 122). See JUDGMENTS, INTERSTATE RECOGNITION OF; INTERNATIONAL LAW, PRIVATE; INTERSTATE LAW. Reference: D. K. Watson, *Constitution of the U. S.* (1910), II, 1193–1205. W. W. W.

FAMILY. The domestic institution is the nursery and training school of citizenship; from earliest times, under various forms, it has been the primary government, as well as church and school. Culture history has studied the stages of evolution of our monogamic family and shown that elemental forces at work in savage society are still persistent and

account for much immoral conduct as well as for some pretended "advance" doctrines of marriage, which are really atavistic. In the home all social problems arise: care of the body, from conception and birth to old age; education of the young; economic strain and consumption of goods; the need of insurance against loss of income by accident, sickness, incapacity, old age, unemployment, death; discipline in morality and respect for law and government; religious sentiment and ideals. The law of domestic relations—marriage and divorce, rights and duties of parents and children, homestead, guardian and ward, inheritance and transfer of property—is fundamental to all other law, and so to general welfare. Government is called upon by modern medical and social science to furnish better guardianship for homeless children, unmarried mothers and their offspring; to define and enforce a higher standard of family income, health of mothers who work for wages, conditions essential to physical efficiency in dwelling, shop and school. Governments are asked to revise the methods of issuing licenses to marry, so as to secure more deliberation and publicity and competent agencies for preventing unfit marriages. It is by legal control that the degenerate can be prevented from propagating a stock of miserable imbeciles and insane, a burden to the nation. Positive eugenics cannot at present expect much help directly from the state, but excision by segregation is possible under legal authority. The action of government, guided by science and a wise prevision of individual, community and race needs, is necessary to carry forward a large and comprehensive social policy relating to domestic life. **References:** G. E. Howard, *A Hist. of Matrimonial Institutions* (1904); E. Westermarck, *The Hist. of Human Marriage* (1891); H. Bosanquet, *The Family* (1906); E. H. Woodruff, *Cases on Domestic Relations* (1897); The Committee of Fifteen, *The Social Evil* (2d ed., 1912). C. R. H.

FAR WEST. **Topography.**—The term "West" has for three centuries been a movable one, first applied to communities on the Connecticut River, and gradually pushed to the Pacific slope. The term "Far West" though not recognized in the publications of the Government, is currently used for the region between the Missouri River, the Rocky Mountains and the ridge of the Sierras, not including California, Oregon or Washington. The Far West includes the thirteen states of Montana, Wyoming, Utah, Nevada, North Dakota, South Dakota, Nebraska, Arizona, New Mexico, Kansas, Oklahoma, Colorado, and Idaho.

Much of this part of the Union is sharply marked off from all the regions to the east by its elevation. West of the Rocky Mountains there are highly elevated plateaus breaking off into the Colorado basin on the south and the Missouri basin on the north. To the west comes the Great Basin with no external drainage. The elevated areas and dry climate make parts of the Far West a health resort, and there are numbers of medicinal springs.

In this region are many differences of climate and conditions, from the sandy deserts of the south, including the gorge of the Colorado, through the broken mountains of western Colorado and Utah to the heavily timbered areas of parts of Idaho; and eastward to the prairies of the western slope of the Mississippi. Except the eastern tier of states, the greater part of this area is not arable. The tillable land lies chiefly in narrow river valleys; it is somewhat extended by systems of irrigation; but there is no wholesale raising of staple crops to send to distant markets; large areas are given up to stock raising, and there are many large cattle and sheep ranches.

Industries.—This is a region rich in minerals, containing the largest copper, silver and gold mines in the United States, and large amounts of coal. Many of the mines are on large veins still workable for years to come, and many distinctive mining towns have grown up, such as Leadville and Butte.

Inasmuch as the welfare of the farmers depends to a great degree on the prosperity of the mines, the whole population was aroused by the fierce struggle over the coinage of silver, from 1878 to 1900 (*see* SILVER COINAGE CONTROVERSY). All the five states admitted from the Far West in 1889 and 1890 solidly demanded through their Senators and Representatives that the Government should buy all their silver offered at a value of one sixteenth that of gold, measured by weight. The development of a gold industry in those states had much to do with the disappearance of this issue.

The eastern tier of the far western states is populous and well provided with railroads; in the western area railroads have been built chiefly as through lines to the Pacific Coast or as feeders to the mines and there are many wide spaces not yet penetrated by rails. Besides the large cities on the Mississippi and Missouri rivers, the only centers of considerable population in this area are Denver and Salt Lake City.

Population.—The total population in the Far West in 1900 was 5,722,569, and in 1910 was 8,334,779. The foreign born population in 1910 was 1,466,156. The race elements are very numerous. In the southern part is the only considerable Mexican element within the United States; elsewhere are found members of all races and newcomers from all states to the eastward.

Conservation.—The great problem of the Far West is summed up in the term "conservation" (*see*), for in this area appear acutely most of the problems of saving the natural resources of the country for the people at large.

(1) The Far West is still in large part the property of the United States Government, immense areas never having been sold or granted by the Government. (2) The region includes magnificent water powers, many of them still on Government land. (3) There are some forests in many recesses of the mountains and heavy forests in the north. (4) The waters of the internal area can in many cases still be made available for a public system or irrigation (*see*). The heavy capitalists of that region and many other people feel it a hardship that the land and its privileges should not be turned over on easy terms to individuals, as was done in the Middle West (*see*). Still the majority of the voters desire the Government to come in and hold these common advantages for the common benefit.

Government.—From the opening of the Far West about 1850, till the completion of the Pacific Railroads about 1890, it was a frontier region, and showed the frontiersman's willingness to try political experiments, hence Wyoming as a territory in 1869 was the first community of the United States to grant woman suffrage. This example had been followed (1913) by five other Far West States, Colorado, Utah and Idaho, Arizona and Kansas. These state governments have been unusually subject to control by individuals and corporations; railroads and owners of mines have controlled legislatures, elected Senators, and sometimes put their dependents into the seats of the judges. The Mormon Church is a powerful, although not a precisely defined, element in the government of Utah, and to some degree, of neighboring states. Most of the states are much interested in public education and all have state universities and technical schools, which in some states are still subject to political manipulations.

See American Government and Geography; Boundaries, Interior; Indian Policy of the U. S.; Irrigation and Irrigated Lands; Middle West; Pacific Slope; Pacific Railroads; Public Lands and Public Land Policy; Territories of the United States, Organized; and states by name.

References: F. L. Paxson, *Last American Frontier* (1910); F. C. Carrington, *Army Life on the Plains* (1910); T. N. Carver, "Corn Growers" in *World's Work*, VII (1903); Katherine Coman, *Economic Beginnings of the Far West* (1912); W. A. White, *In Our Town* (1906); R. L. Stevenson, *Across the Plains* (1892); H. M. Chittenden, *Fur Trade of the Far West* (1902); H. H. Bancroft, *Hist. of Utah* (1889); F. J. Turner, *Rise of the New West* (1906); Samuel Bowles, *Our New West* (1869); bibliography in Channing, Hart and Turner, *Guide to Am. Hist.* (1912).

Albert Bushnell Hart.

FAREWELL ADDRESS. An address given by Washington (*see*) to the people of the country through the public press, September 17, 1796, shortly before retiring from the presidency, in which he besought his countrymen to support the Government, preserve public credit, and avoid "permanent alliances with any portion of the foreign world."

O. C. H.

FARMERS' ALLIANCE. There have been many organizations of farmers in different parts of the country, for purposes looking towards the improvement of educational, industrial and political conditions of that class. The Granger (*see*) movement begun in 1867, is one of the earliest. A Farmers' Alliance was organized at Poolville, Parker County, Texas, on July 28, 1879. It received a charter in 1880, and a state alliance was formed in 1882. The motive was to better the general conditions of the farming class. A Farmers' Union of Louisiana soon followed, and in 1887 there was a union of the Texas and Louisiana organizations. Organizers were sent out to the neighboring states, and in 1888 there was a union of the various organizations of the southwest.

In the northwest, a similar movement was going on. In 1877, there was a local farmers' organization in Cook County, Illinois. In 1880 was formed the National Farmers' Alliance. Thirteen states were represented. The purposes were to oppose class legislation, the encroachment of capital, and candidates not in sympathy with farmers, and also to demand the nomination of farmers as candidates. There was special opposition to the railroads and the speculators, who seemed to act together to take most of the value of the western products in freight charges and speculation. This alliance was usually called the "Northern Alliance." In 1889 there was a union of several organizations, and the name adopted was "The National Farmers' Alliance and Industrial Union." There were other local orders, such as the Colored Alliance, which had a large membership; the Farmers' Mutual Benefit Association, of Illinois; the Supreme Association of the Patrons of Industry, with headquarters in Michigan.

The National Farmers' League was organized in 1890, with purposes mainly political. Its political order was as follows: to favor the issue of Treasury notes, Government loans to individuals, the increase of the circulating medium to $50 per capita, free and unlimited coinage of silver, Government ownership and operation of railroads, election of Senators by popular vote, and an income tax; to oppose national banks, and alien ownership of land. At first it planned to graft itself on an existing party, but failing in this, a new political party was formed, combining with the agricultural classes the various labor classes of the cities. This party, the Peoples' or Populist (*see* Populist Party), has had conven-

tions and candidates since 1892. The platforms have advocated, in addition to the questions already mentioned, postal savings banks, initiative and referendum, and only one term for the presidency. The hope to unite all laboring classes in one political party has not been realized.

References: J. A. Woodburn, *Pol. Parties and Party Problems* (1903), 110–118; E. Stanwood, *Hist. of the Presidency* (1898), 491, 508; F. M. Drew, "The Present Farmers' Movement" in *Pol. Sci. Quart.*, VI (1891), 282–310; W. A. Peffer, "The Farmers' Defensive Movement" in *Forum*, VIII (1889), 464–473.

T. N. HOOVER.

FARMERS' ASSOCIATIONS. The farmers' associations in the United States are mostly voluntary and receive no aid from the government; but some state agricultural and horticultural societies draw support in whole or in part from public funds, and their reports are published by the government of the state. The recognition of the obligation of the state to further agricultural interests will bring about more comprehensive departments of agriculture, coördinate at least with departments of insurance, banking, and the like, and these may take over some of the activities that have been exercised by more or less voluntary organizations (*see* AGRICULTURE, RELATIONS OF GOVERNMENT TO).

The number of farmers' organizations in the United States is very large, but the major part of them is unknown to the public. For various coöperative efforts such as buying and selling and transacting general business, there were in existence among farmers in 1907, something like 85,000 organizations representing a membership of more than 3,000,000 different persons. Many of these are creameries, and cheese-factories; others are coöperative insurance societies, telephone societies, irrigation societies, grain elevator organizations, fruit-growers exchanges, coöperative communities. Many of these are coöperative only in part or even in name. Some of them are corporations with coöperative features.

A new and powerful movements aims to provide the farmers with better facilities for raising money to carry on business. It is becoming apparent that agriculture is crippled for lack of credit and banking facilities. This need has been met abroad by agricultural credit associations which enable farmers to secure money at law rates. In 1913 a special commission, in which the Government and a majority of the states were represented, investigated the European systems. Several states have pending legislation authorizing the organization of coöperative credit societies.

Of the strictly agricultural societies, organized for the general discussion of questions in common, there were in the United States, in 1909, nearly, or quite, 1,000 of greater geographical range than the county; and the number of county and lesser organizations is very great. Those of national or general scope are organized to promote interest in live-stock, in horticulture, in dairying, in forestry, in bee-keeping, in fairs, and in general agriculture; of societies of wider scope than state lines there were, in 1909, upwards of 250. These numerous societies of both local and general scope cover practically every phase of agriculture and country life.

The widespread movements for the organization of societies to promote agriculture goes far back. The Philadelphia Society for Promoting Agriculture, established in 1785, is still in existence (1913), also a similar society in South Carolina. For a long period they were the leading means or agencies for making progress in rural affairs, and attracting persons of leadership. More effort should be expended in organization for economic coöperative benefit, yet it must not be overlooked that such organization should grow directly out of American conditions and not be imported. The underlying social and business fabric of American rural life is so unlike that of most other countries that this caution needs to be heeded.

See AGRICULTURE, RELATIONS OF GOVERNMENT TO; FARMERS' ALLIANCE; GRANGERS.

References: L. H. Bailey, *The Country Life Movement* (1911), 97–104, 125–132; *Cyclopedia of Agriculture* (1907), *passim.*

L. H. BAILEY.

FARMS, COUNTY. See COUNTY FARMS.

FATHER ABRAHAM. A title of affection bestowed by his followers upon Abraham Lincoln (*see*). O. C. H.

FATHER OF HIS COUNTRY. A title of affection bestowed upon George Washington in recognition of his unequalled service both during the War of Independence and in establishing the Government under the Constitution. O. C. H.

FATHER OF THE CONSTITUTION. James Madison was so called, because of the leading part he took in the formation and adoption of the Constitution—as the member of the Virginia legislature who moved the election of delegates to a Federal Convention, as the real author of the Virginia resolutions which ultimately formed the foundation of the Constitution, and as one of the authors of the *Federalist.* See FEDERAL CONVENTION; FEDERALIST; MADISON, JAMES. O. C. H.

FAVORITE SON. A phrase, which gained political currency soon after the Civil War, applied to an aspirant for the presidential nomination backed by an enthusiastic and admiring following from his own state but whose prestige is often small beyond it. O. C. H.

FEDERAL CONVENTION AND ADOPTION OF THE CONSTITUTION

Problems.—For a proper understanding of the work of the Federal Convention and of the Constitution which it succeeded in drawing up, it is necessary to know the conditions of the time and the problems that had to be met and solved. For a generation men had been deeply interested in questions of practical and theoretical politics. The American Revolution was more than a war; it resulted in the establishment of new institutions. The men who came together in 1787 had had some experience in the forming of state constitutions and in the management of state governments. The old colonial system of Great Britain and the history of the colonies had given instruction in the organization and workings of a composite political system, for in fact political power had been divided in practice between the government at Westminster and the governments of the individual colonies. Valuable lessons had been learned from the trials of the Revolution, from the efforts to make a confederation, and, above all else, from the difficulties and vicissitudes during the Confederate period.

The Articles of Confederation (*see*) had proved to be entirely inadequate. By 1787, the whole system provided by the Articles had nearly gone to pieces. By this time it was plain to most thinking men that if the Union, which practically everybody hoped would continue as a real thing, was to hold together and do its work, the Congress or some central authority must have actual power; and experience pointed to the necessity of lodging in this central authority three powers in particular, which the Articles of Confederation did not provide for: (1) the right to regulate foreign and interstate commerce; (2) the right to obtain money, and not simply to ask for it; (3) the right to make treaties with the assurance that the states would be bound by the terms of the treaties and not be at liberty to disregard them at will.

There was, however, underlying all this question of power and authority a more difficult question. The mere distribution of powers between the states on the one hand and a central authority on the other did not present an insurmountable problem; the long colonial experience had pointed to certain general principles of distribution. But what assurance could there be that if a thoroughly articulated scheme were hit upon, if the adjustment between the central and local authorities was strictly correct in theory, the states would abide by their obligations, perform their functions as members of the Union, and not go their old way, guided by mere local prejudice and self-concern? If the Union was to last some arrangement must be made whereby there would be assurance that the states would not fail to fulfil their obligations and would abide by the provisions of the articles of union. Here was a most difficult problem. In fact it was in some ways the same problem that had confronted English and American statesmen in the controversy concerning the legal make-up of the English empire. Theoretically it might have been solved for the United States, simply by bestowing all authority upon the central government and thus establishing a centralized state; but practically this was impossible. The task, therefore, was to hit upon the proper principle for the organization and maintenance of a composite state.

Organization.—The convention of 1787 was summoned because of a resolution of Congress passed at the instigation of the Annapolis Convention, calling upon the states to send delegates to meet in Philadelphia, the second Monday of May, "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several Legislatures such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the States, render the Federal Constitution adequate to the exigencies of Government, and the preservation of the Union." Delegates were appointed by all of the states except Rhode Island, though those from New Hampshire did not appear until the convention had been for some time at work. Altogether, 73 delegates were appointed and of these 55 took some share in the deliberations of the convention. Only 39 signed the finished instrument. Three who were present at the end refused to sign, namely, George Mason, Edmund Randolph, and Elbridge Gerry. The convention was organized for work May 25, and continued its discussions until September 17, when the Constitution was signed and turned over to the Congress of the Confederation, with the request that it be submitted to the various states, to be passed upon by conventions of the people to be assembled for that purpose in their respective states. All the sessions were secret, the members being under obligations to report nothing concerning its proceedings. George Washington was chosen president; and William Jackson, secretary. Of the most influential and important men who took part in the convention special mention may be made of Rufus King, of Massachusetts; Roger Sherman, Oliver Ellsworth, William S. Johnson, of Connecticut; Robert Yates and

Alexander Hamilton, of New York; William Paterson and David Brearly, of New Jersey; Benjamin Franklin, James Wilson, Gouverneur Morris and Robert Morris, of Pennsylvania; John Dickinson, of Delaware; Luther Martin and James McHenry, of Maryland; George Washington, James Madison, Edmund Randolph, and George Mason, of Virginia; Hugh Williamson, of North Carolina; Charles Pinckney and Charles C. Pinckney, of South Carolina; Abraham Baldwin, of Georgia.

Records of the Convention.—Although this convention was one of the most important deliberative bodies that ever assembled, we have not a complete and perfect account of its deliberations. Even the formal journal was not kept with strictest care and accuracy. It was first published in 1819, and the Secretary of State, John Quincy Adams, had considerable difficulty in preparing it from the notes left by Jackson, the secretary. Our chief information is gathered from the notes of debates taken by James Madison, and these are surprisingly full and accurate. Other memoranda, more or less fragmentary, were left by other members and have gradually come to light and been published; we now have, therefore, the minutes of Robert Yates and the notes of Rufus King, James McHenry, William Paterson, William Pierce, Alexander Hamilton, and James Wilson. We get some further information from letters written by delegates, from speeches in the various state ratifying conventions, and from essays or pamphlets that were written concerning the convention's work by men who had taken part in its deliberations.

Randolph and Pinckney Plans.—On May 29, 1787, soon after the formal organization of the convention, Edmund Randolph, in behalf of his state delegation, presented a series of resolutions embodying a general scheme for the new government and reorganization of the Union. This was the so-called Randolph, or Virginia, plan, which formed the basis of the discussions of the convention and was in the end elaborated into the Constitution of the United States. It provided for a real government, with legislative, executive, and judicial departments. Legislators were to be chosen from the states in proportion to their respective populations. The plan attempted a solution for the great problem of organization discussed in a preceding paragraph by providing that state officers should be bound by an oath to support "the Articles of Union," that the national legislature should have the right to negative all laws passed by the several states contravening, in its opinion, the articles of union, and to call forth the force of the Union against any member failing to fulfil its duties under the articles.

Immediately after the presentation of Randolph's plan Charles Pinckney, of South Carolina, presented a plan of his own, concerning which there has been a great deal of discussion. The original plan has been lost, and no one knows its exact contents. The Pinckney plan, as it appears in the journal and in various editions of Madison's Notes, is one sent by Charles Pinckney to John Quincy Adams at the time he was preparing the journal for publication in 1818, and is clearly not the one which was presented to the convention on May 29, 1787. Scholars have, however, been able to determine the nature of Pinckney's propositions and they appear to have had influence in working out the general scheme of government. Randolph's plan was discussed in a committee of the whole until June 13, when a series of nineteen resolutions was drawn up by the committee and presented to the convention.

Large and Small States.—By this time it was apparent that there were divergent elements in the convention. Some were desirous of establishing a strong national government, and were not at all scrupulous about observing the exact wording of the call of the convention, which appeared on the surface to limit its activities to revising and amending the Articles of Confederation. There were, on the other hand, those that wished only to amend the Articles of Confederation, and were not zealous for the establishment of a strong and effective national government, although all realized that something had to be done. The parties to the convention have commonly been called "the large-state party" and "the small-state party." The large-state party favored proportional representation, because it believed such representation just, and also because many of the members believed that the new system should provide for a national government, and not merely revamp a confederation of sovereign states. The small-state party, on the other hand, is less easily described. Its members agreed in general in their opposition to proportional representation, but some were not on principle opposed to the establishment of a national government and a strong central authority. Some were insistent that the principle of the Confederation should be maintained. The large-state men were the representatives from Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia. New York, which was, in one sense, a large state, was represented by two delegates, Lansing and Yates, who were out of sympathy with the national movement, and by Alexander Hamilton, who was a most vigorous defender of the principle of centralization and strength.

When the nineteen resolutions mentioned above were presented to the convention for adoption, Paterson, of New Jersey, presented a plan which had been worked out by the small-state men. It was evidently thrown together somewhat hastily, purporting only to revise, correct and enlarge the Articles of Confederation. Naturally, equal representation of the states was provided for. It bestowed addi-

tional powers on Congress and gave Congress authority to compel obedience to its acts in case it should be opposed by any state or any body of men in any state. This is the so-called New Jersey, or Paterson plan. After considerable discussion, in which the conflicting principles of the two plans—the Randolph plan and the Paterson plan—were thoroughly discussed, the convention resolved by a vote of seven to three, Maryland being divided, not to accept the small-state proposition, and the discussion proceeded on the resolutions into which the Virginia plan had been developed.

Proportional Representation and the Final Compromise.—For a considerable time debates centered on the question of proportional or equal representation, and in this connection the nature of the new order and the question of the sovereignty of the states was brought out with considerable distinctness. It was clearly declared that it was the intention of the large-state men to establish a government acting immediately upon individuals and springing directly from the people. Wilson asserted in a strong speech that it was

> necessary to observe the two-fold relation in which the people stand—first, as citizens of the General Government; and, secondly, as citizens of their particular State. The General Government was meant for them in the first capacity; the State Governments in the second. Both governments were derived from the people—both meant for the people—both, therefore, ought to be regulated on the same principles. . .The General Government is not an assemblage of State but of individuals, for certain political purposes; it is not meant for the States, but for the *individuals* composing them; the individuals, therefore, and not the *States*, ought to be represented in it.

In this way, in discussing the basis of representation the men worked out the principle of the new order: the recognition of two governments, each immediately over its citizens, and each with authority to carry out its own laws—an arrangement which is the center of the federal system as it now exists in the United States.

The small-state party was not easily overcome, and, as the days went by, it obtained organization and consequent strength. Finally, however, on June 29, proportional representation was decided upon for the lower house by a vote of six to four, Maryland once again being divided. The basis of representation in the upper house was then discussed with renewed acrimony. The feeling ran high and it appeared as if no conclusion could be reached. The small-state men believed that if proportional representation were established in both houses the small states would be at the mercy of the large ones, and this was strongly felt even by those who were not opposed to a national system. When, at length, it seemed that no agreement could be reached a special grand committee, composed of one delegate from each state was appointed. This committee proposed the so-called "great compromise," and after, some discussion, it was adopted by the convention. Accepting the plan of proportional representation in the lower house it provided, that in the upper house each state should have "an equal vote." All bills for raising and appropriating money and for fixing salaries were to originate in the lower house and not to be altered or amended in the second branch. These provisions, it should be noted, were afterwards somewhat altered by providing simply that bills for raising revenue should originate in the House and that there should be two Senators from each state, evidently with the right to vote individually, and not simply together to cast one vote as the vote of the state they represent.

The Critical Problem of Federal and State Authority.—We now turn to a consideration of the measures provided by the Virginia plan for solving the great critical problem of federal as against state authority. It will be remembered that the plan included three provisions. Of these only one—that which declared that the state officers should be bound by oath to observe the Constitution—found a place in the finished instrument. The provisions for coercion and for negativing state acts were not adopted. It has sometimes been plausibly argued that the failure to provide for a coercion of the states is proof that the framers expected that the states were not to be under restraint. As a matter of fact, all of the plans, even the plan of the small-state men, contained some provision for coercion, and it was not included in the Constitution, because as the general arrangements developed and as men saw more and more clearly the nature of the new order and what it signified, they saw that coercion of states—as states—would be out of place. In truth the stipulation that states might be coerced to abide by the agreement would be justifiable and appropriate in a contract between sovereignties, but it would not be expected in a document establishing a Constitution over individuals. Its very absence shows an intention to form a government which could exercise its power immediately upon citizens and would not come into contact with states, as states. In this connection the words of Madison, in a letter written to Jefferson after the convention, are full of interest.

> It was generally agreed that the objects of the Union could not be secured by any system founded on the principale of a confederation of Sovereign States. A *voluntary* observance of the federal law by all the members could nover be hoped for. A *compulsive* one could never be reduced to practice, and, if it could, involved equal calamities to the innocent and the guilty, the necessity of a military force, both obnoxious and dangerous, and, in general, a scene resembling much more a civil war than an administration of a regular Government. Hence was embraced the alternative of a Government which, instead of operating on the States, should operate without their intervention on the individuals composing them; and hence the charge in the principle and proportion of representation.

The question of the negative was long discussed. Some of the members believed that the

Union could not hold together without this provision; for the states would be sure to pass legislation violating the Constitution. The abandonment of this device for keeping the states within limits must be seen in connection with the development of the judiciary and of an appreciation of what the Constitution should be. Even during the days of the Confederation there had been some notion that state acts violating treaties or distinctly contrary to the principles of the Confederation were beyond the competence of the states and might be disregarded as invalid. Such a conception as this was not unnatural to men who had lived in a colonial system in which the colonies were bound by an exterior sovereign authority, and in which there had been written charters limiting the colonial governments. And thus in the course of the convention the fundamental principle was recognized and applied to the problem of maintaining a national government and a federal system. The Constitution, laws, and treaties of the United States were declared to be the supreme law of the land, and the judges in every state were to be bound thereby, anything in the constitutions or laws of the respective states to the contary notwithstanding. This, it should be noticed, means that the Constitution is law and to be enforced by courts, for the important word is not "supreme"—but "law." For the first time in history courts were to be called upon to protect the fundamental system of the body politic and to perpetuate a federal system. In consequence of the acceptance of this principle it was unnecessary, as Sherman pointed out, to vest in the national legislature the right to veto state acts. In fact, as he said, "such a power involves a wrong principle; to wit, that the law of a state contrary to the Articles of the Union would, if not negatived, be valid and operative."

The Machinery of Government.—The task of describing the actual machinery of government, the duties of the various departments and the distinct prohibitions that should be laid upon the various states was, of course, not an easy one, and even on these subjects there was often marked difference of opinion. When once the fundamental character of the Union was decided upon, however, and particularly when the principle of representation was disposed of, there was no strong cleavage of the convention into distinct parties; work went rapidly forward on matters of detail and the mechanism of government was gradually worked out.

There was considerable trouble in deciding upon the method of electing the President of the United States, as well as on the measure of his authority. This is not to be wondered at when we remember that men were planning to establish an executive authority which would at once have power, dignity and competence, and still not run counter to the principles of republican government. For selecting the President a system of electors chosen by the various states was hit upon, but this did not solve the whole problem of election, for here again arose the jealousy between the big states and the little states. If the electors were designated from the states in proportion to population, the large states would have the advantage, and to this the small states objected. Finally, a compromise was reached—that in case no one received a majority of the votes the right of choice should devolve upon the House of Representatives, which should, under certain limitations, choose one from the candidates voted for by the electors; but in making the choice the vote should be by states and not per capita.

Slavery and Compromise.—Serious questions arose concerning the basis of direct taxation and of representation, for the problem was complicated by the existence of slavery. The system of requisitions had prevailed under the Confederation, and it was supposed that it would be continued in the future with more or less regularity. How should these requisitions be distributed? In accordance with wealth, or population, or both? And how should either population or wealth be determined on? Strange as it may seem, there was no distinct recognition that the normal basis of representation ought to be persons, and that the normal basis of taxation ought to be wealth. It was finally decided, however, that representatives and direct taxes should be apportioned among the several states according to their respective numbers, which should be determined by adding to the whole number of free persons (including those bound to service for a term of years, and excluding Indians not taxed) three-fifths of all other persons. The inclusion of three-fifths of the slaves constituted what is commonly called the three-fifths compromise. There was some objection to it in the Constitutional Convention, but neither then nor in the later discussions in the state conventions was great stress laid upon it. This adjustment had already been suggested in the Congress of the Confederation and was not, therefore, altogether a novel arrangement.

Probably, writers on the work of the Federal Convention have over emphasized the trouble caused by slavery in the discussion. There was, undoubtedly, difficulty in reaching an adjustment; but the jealousy between the large states and the small states—a jealousy which reached back, in one form or another, into the early revolutionary times—was much more acute and troublesome. In the later days of the slavery contest men seemed to believe that the Constitutional Convention was largely taken up with reconciling differences between the free and the slave states, forgetting that nearly all states then had slaves, and that the leaders in opposition to slavery and the slave trade came not alone from Pennsylvania but from Virginia as well. There was opposition to the

importation of slaves, for it was realized that there were elements among the people which would strongly object to the continuance of the slave trade. On the other hand, the states of the lower South greatly desired the introduction of more slave laborers, and insisted that such right should not be interfered with by the National Government. This subject was connected with the general proposal to give Congress extensive power over commerce; an opportunity was thus allowed for an adjustment by compromise, whereby Congress was given, in general terms, the right to regulate foreign and interstate commerce, but was forbidden to prohibit the slave trade before 1808, although it could levy a tax or duty, not exceeding $10.00, on each slave imported into the United States.

Conclusion.—The result of the convention's work was to provide for a national government to be established through special conventions of the people in the various states. This government was to have three coördinate branches. It was to legislate for its own citizens and enforce its acts directly upon them. To it were given, in addition to other large powers, the three important general ones of which we have spoken above: the power to levy taxes and imposts; the power to regulate foreign and interstate commerce; and the power to make treaties, which treaties were declared to be, like laws of Congress and the Constitution itself, the supreme law of the land.

As the convention neared the end of its labors it was apparent that the Constitution was not in all its parts acceptable to everybody. Perhaps it is not unjust to say that no one was entirely satisfied. The delegates believed, however, that it was the best that could be done. The Constitution, accompanied by a letter prepared by the convention, was sent to the Congress of the Confederation, which, by a resolution of September 28, 1787, transmitted it without comment "to the several Legislatures in Order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the Convention. . . . "

Ratification.—There was still great difficulty in securing the adoption of the Constitution. The opposition was notably strong in Massachusetts, New York and Virginia, while North Carolina and Rhode Island did not adopt the Constitution till after the new government went into operation. The several states acted in the following order: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 7, 1788; Maryland, April 28, 1788; South Carolina, May, 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790.

The opponents of the Constitution objected to the absence of a bill of rights, as well as to various provisions of the instrument. Some of them advocated amendment before adoption, and there was a serious movement for a new convention. While the discussion was in progress in the state conventions a letter from Washington was printed in a Boston paper: "I am fully persuaded," he said, " . . . that it [the Constitution] or disunion is before us to chuse from. If the first is our election, a constitutional door is opened for amendments, and may be adopted in a peaceable manner, without tumult or disorder." This suggestion helped adoption and a number of the states submitted amendments along with their ratifications.

See Bill of Rights; Confederation; Constitution-Making; Constitution of the United States, Compromises of; Constitution of the United States, Growth of; Constitution of the United States, Controversies under; Constitution of the United States, Prohibitions in; Constitution of the United States, Sources of; Constitutional Convention; Social Compact Theory; State Sovereignty; United States as a Federal State.

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Andrew C. McLaughlin.

FEDERAL QUESTION. A question arising under the Constitution, an act of Congress or a treaty of the United States, requiring their interpretation or application by a court. It is one of the principal grounds of jurisdiction of the federal courts. Reference: Tennessee *vs.* Davis, 100 *U. S.* 257. H. M. B.

FEDERAL REPUBLICANS. A name adopted by the followers of George Clinton in New York, who organized, in 1787, to oppose the adoption of the Constitution and in 1789 supported Clinton against Adams for Vice-President. The term was also applied during Monroe's administration to those supporters of the President who formerly had been Federalists. See Clinton, George. O. C. H.

FEDERAL STATE

Definition.—Among the various devices for combining several independent states into a more or less effective union, the so-called federal state is the most perfect. The federal state is distinguished from a unitary state (*see*) in this: "Federalism means the distribution of the force of the state among a number of coördinate bodies, each originating in and controlled by the constitution. Unitarianism means the concentration of the strength of the state in the hands of one visible sovereign power, be the power Parliament or the Czar." As a condition antecedent to a federal state, there must be present a number of countries practically contiguous in territory, possessing by reason of their history race or common experience the stamp of a single nationality or the instinct of a common national life, as, for example, the cantons of Switzerland, the colonies of America, the several states of the North German Bund. Moreover, in order to preserve a federal state there must be a balance of the centrifugal and centripetal forces of the combining political factors. There must be a strong desire for union offset by an equally strong resistance to unity. Without the one, federalism is impossible. Without the other, the result will be unitarianism. In the formation of federal states, then, the sentiment of the people seeking a permanent alliance must partake of these two antagonistic elements: a desire for union and a loyalty of each for his own separate state. "A federal state," says Mr. Dicey, "is a political contrivance intended to reconcile national unity and power with the maintenance of 'state rights.'"

Distribution of Powers.—The great problem confronting the organization of several independent states into another form, in which each shall give up a part of its own rights in order to create a strong and effective national whole, is the problem of adjusting the relations of the central government to the government of the several states so as to secure at once harmony and efficiency. This end is accomplished by an accurate division of powers between the two, the national and the state governments, parting to each of these two agencies that portion of governmental activity for which it is best fitted. The general principle governing the distribution of powers is to grant to the general government matters which can best be controlled by it, and to retain for state action those functions which directly concern the people as separate communities. Thus it is generally conceded that the control of foreign relations, the maintenance and command of the armed forces, the making of peace and war, the regulation of post and telegraph matters, coinage and currency, and the administration of customs duties shall be within the power of the central government. In the United States the division of powers is as follows: (1) powers vested in the National Government; (2) powers reserved exclusively to the states; (3) powers, usually called concurrent, which may be exercised by either National or state government; (4) powers denied to the National Government alone; (5) powers denied to the state governments alone; (6) powers denied to both the National and states governments. In the exercise of its powers the general Government acts directly and immediately upon the individual, operating through its own organs. In Germany, in certain instanees, the central government acts mediately through the states, forcing its action ultimately by what is known as an "execution." Where the national government occupies a certain field of activity, the operation of the state government in the same field is excluded, or, if concurrent action is permissible, the national government takes precedence when its power is exercised and is exclusive.

Written Constitution.—The distribution of powers between the central and the state governments necessitates the creation of a written constitution in which the various powers are explicitly defined. The details of this division vary under various federal constitutions, but they all rest upon the general principle already enunciated. See, for example, the Preamble to the Constitution of the United States and the Tenth Amendment to that instrument, and the preamble and Article 3 of the Swiss *Constitution Fêdérale.* This division of powers between the national and state governments is one of the essential features of the federal form. The very end to be secured by the formation of a federal state carries with it a partition of powers between the central government and that of the individual states. "The powers given to the nation form in effect so many limitations upon the authority of the separate states, and as it is not intended that the central government should have the opportunity of eneroaching upon the rights retained by the states, its sphere of action becomes the object of rigorous definition." This constitution which distributes power between the central government and the individual states must in the nature of things be supreme. The doctrine of the supremacy of the constitution carries with it logically the principle that that instrument of organization must be the "supreme law of the land," as the Constitution of the United States explicitly states (Art. VI,

¶ 2), and it becomes, therefore, the final justification for all the exercise of powers under it. Not only is the existence of the federal state based upon the Constitution, but such powers as are exercised by it are exercised by the explicit grant of that document.

Federal Court.—But a "supreme law" implies some body invested with judicial power to interpret it, for the interpretation of a law is a judicial function and belongs to the judicial rather than to the executive or to the law-making branch of the government. It is only in the United States that this doctrine has been carried to its logical issue, and a Supreme Court erected and vested with the power of finally determining questions of legality touching the exercise of powers claimed under the Constitution. It is in the United States alone that federalism has been given its logical meaning and effect, *viz.*, the distribution of the force of the state among a number of coördinate bodies each originating in and controlled by the Constitution. "The legal supremacy of the Constitution," says Dicey, "is essential to the existence of the state; the glory of the founders of the United States is to have devised or adopted arrangements under which the Constitution became in reality as well as in name the supreme law of the land." The interpretation of this supreme law and the application of it to specific cases is placed in the hands of a federal court, which exercises powers coördinate with the legislative and executive branches of the government. This federal court derives its existence, as to the other branches of the Government, from the Constitution (Art. II, Sec. i), and therefore stands on an equality with them. It might seem, at first sight, that the Supreme Court exercises a sort of superior function over the other branches of the Government, in that it may declare, and sometimes does declare, acts performed by the executive and legislature void as being *ultra vires*. But what the court does is merely to say that certain acts were not done in conformity with the grant of the supreme law of the land and for that reason were not legal and for that reason not. to be heeded. It does not repeal the act. It declares the act void in the particular case before it.

This logical division of powers, by which the federal idea is carried to its consequential conclusion, finds no place in the federal institutions of Germany or Switzerland or any of the modern constitutions. While each possesses a federal court invested with large powers of determining questions arising between the federal government and the individual states, none of them have accorded to it the right to pass upon the acts of the legislative branch of the federation as to whether these acts were done in accordance with the express powers granted by the constitution. Such determination is placed in the hands of the *Bundesrath*, in Germany, or in the hands of the Federal Assembly, in Switzerland, thus making the federal tribunal a subordinate, rather than a coördinate, branch of the government. In fact it would seem to be regarded as an unwarrantable restriction on the sovereign will of the state as expressed by the law-making body should the judiciary attempt to interfere or to declare any act which the legislature should pass after due deliberation as *ultra vires* and illegal.

Sovereignty.—It might well be asked where, inasmuch as a federal government is subject to the principle of a division of powers, sovereignty in a federation is located. *Legal* sovereignty is located in that institution which has the power, in the last analysis, of altering or amending the constitution by legal means. This power varies in various federal governments, but it may be generally conceded that the sovereign power of a state is found in that body which can impose its will upon state form through legal amendment of its constitution. Thus the five leading systems of federal government differ from one another in their power to modify their organic law. In the United States, changes in the Constitution can be brought about by the sanction of three-fourths of the states, and no state can be deprived constitutionally of its equal representation in the Senate without its consent (Art. V). In Switzerland, the federal constitution can be revised only by a combined majority of the Swiss people and of the Swiss cantons, nor can any amendment of the constitution be effected constitutionally which is not approved by a majority of the cantons. Under the organic law of Germany amendments may take place through the federal legislature in the way of ordinary legislation, but no law amending the constitution can be carried if opposed by 14 votes in the *Bundesrath*. Certain rights are also guaranteed to several states which cannot be changed without the consent of the state affected. The constitutions of Canada and of Australia, being acts of Parliament, may be altered or even abolished by an act of the imperial Parliament.

Dual Citizenship.—In acquiring citizenship in a federal state, the duality existing relative to other matters is found here. Theoretically, the task of differentiating foreigners from subjects and citizens of a state would seem to be almost mechanical. This is particularly true of a unitary state. There arises but a single question: what is the relation of this person to the state as against any and all foreign states? In a federal state, however, the matter is complicated by the fact that every individual stands in a dual relationship; on the one hand he sustains certain relationship to the federal state as a whole, and on the other he sustains certain relations to the individual state in which he resides. The moment an attempt is made to define the status of such a person, not one but several questions arise: What is the relation of the person to the

federal state as against all other foreign states? What is his relation to the state in which he resides? What is his relation to the other federated states of the Union? Is it possible to become a citizen of one state and not of the federation? Are there two or more independent citizenships, each occupying its own sphere, or is there a double citizenship of such a nature that one is superimposed upon the other, is dependent upon the other, exists because of the other, not coördinate but subordinate? In such case, which is primary? Which controls the matter of naturalization? In the United States, under the Constitution (Art. I, Sec. viii, ¶ 4), the Federal Government alone controls citizenship and naturalization. Citizenship of the Union is primary. Whoever becomes a citizen of the United States becomes at the same time a citizen of that state in which he secures a domicile, irrespective of his own desires. In Germany, on the contrary, and in Switzerland, citizenship in the individual state or canton is primary. A person becomes a citizen of Germany or of Switzerland by first becoming a citizen of the state or of the canton, though the states suffer certain limitations as to citizenship under the federal constitution of both countries.

Modern Tendency.—The incapacity of individual states to live alone, and a desire on the part of governments to enjoy the privileges of greatness without possessing the means to achieve it by themselves, were the prime reason and motive for adopting the federal form. Federalism, however, has shown weaknesses upon its economic and social side. The legalistic spirit turns instinctively to the Federal Government as the sole competent organ of sovereignty in the country, hence, as in the United States, every resource of legal ingenuity is strained to bring rights and interests under the federal jurisdiction. In other words, with its later growth there is an obvious tendency on the part of federalism to modification looking toward increased centralization. In fact it is a fair question whether, in view of the modern trend, federal government is to be regarded as a final and permanent form of government, and not rather as a step on the way of those states which have been too insistent on state rights to form a democratic unitary republic.

See CONSTITUTIONS, CLASSIFIED; COURTS AND UNCONSTITUTIONAL LEGISLATION; GERMANY, FEDERAL ORGANIZATION OF; LAW, CONSTITUTIONAL, AMERICAN; SOVEREIGNTY; STATES, CLASSIFICATION OF; SWITZERLAND, FEDERAL GOVERNMENT IN; UNITED STATES AS AS A FEDERAL STATE.

References: J. B. Westermarck, *Staatenbund und Bundesstaat* (1892); G. Jellinek, *Die Lehre von den Staatenverbindungen* (1882); S. Brie, *Der Bundesstaat* (1874); A. V. Dicey, *Law of the Constitution* (7th ed., 1908), ch. iii; J. Bryce, *Am. Commonwealth* (4th ed., 1910), I; J. W. Garner, *Intro. to Pol. Sci.* (1910), 149 *et seq.* BURT ESTES HOWARD.

FEDERAL THIRTEEN. An appellation of admiration bestowed, in 1800, by the Federalist press in Pennsylvania upon the thirteen Federalist members of the state senate who forced the Republican house to agree to the choice of seven Federalist presidential electors out of the total fifteen chosen. O. C. H.

FEDERAL WRITS. Written commands or precepts issued by a federal court or other officer of the United States Government.

H. M. B.

FEDERALIST. When the Federal Constitution was presented to the states for adoption, there was naturally much discussion. Pamphlets were published, essays appeared in the newspapers, and all kinds of comments appeared in print. Of all these publications the most famous are the essays of Hamilton, Madison, and Jay, which were published in the newspapers in defence of the Constitution and in interpretation of its provisions. Hamilton appeared to have originated the idea of making a thorough and systematic discussion of the whole document, and he secured the services of the others. These three men were well fitted for the task. Jay had had wide experience in public office under the Confederation (*see*); Madison, in addition to other public experience, had taken a leading part in the formation of the Constitution. Hamilton's pen was ready, and his political knowledge sound. Jay wrote five essays altogether, most of them dealing with the provisions of the Constitution affecting foreign affairs. Madison took a large part in discussing the general principles of government, the separation of the powers, representation and other essentials of the new system. Hamilton covered a wide field commenting on the functions of the departments of government and elucidating a large portion of system with skill and sagacity. There is some dispute concerning the authorship of a few of the numbers; perhaps it cannot be absolutely determined whether they came from the pen of Hamilton or Madison. But it is not important. These essays are clear, concise, learned, and philosophical; merely from a literary point of view they are noteworthy. They have always been considered of the highest value as contemporaneous interpretation of the Constitution and as profound discussion of political principles. **See** FEDERAL CONVENTION; HAMILTON, ALEXANDER. **References:** P. L. Ford, Ed., *The Federalist* (1898); H. C. Lodge, Ed., *The Federalist* (1888); E. G. Bourne, "The Authorhsip of the Federalist" in *Am. Hist. Review,* II (1897), 443; P. L. Ford and E. G. Bourne, "The Authorship of the Federalist" in *Am. Hist. Review,* II (1897), 675–687. A. C. McL.

FEDERALIST PARTY

Origin of Federalism.—The beginnings of the Federal or Federalist party must be sought in the movement of political restoration which began about 1786 and culminated in the adoption of the new Federal Constitution. During the Revolution the Whig or Patriot party had triumphed over the Tories only to succumb to the insidious dangers of complete success. For want of opposition the party began to disintegrate. Either factional quarrels occurred, as in Massachusetts and New York, or earlier alignments along sectional or class lines were resumed, as in South Carolina and Pennsylvania. The wide-spread financial distress of 1785 and 1786, however, and the consequent social and political disorders, produced a community of interests among conservative men irrespective of their political antecedents. The utter inadequacy of the government of the confederacy to support the public credit was apparent. Every proposal to clothe Congress with power to regulate commerce and to raise a revenue had failed. For want of power to enforce treaty obligations, Congress could not meet the just claims of foreign creditors. In the crisis of 1786 the helplessness of Congress was self-confessed. What was needed everywhere was a restoration of the authority of the central government. Under pressure of these circumstances, the movement was initiated which led to a convention to revise the Articles of Confederation (*see* CONFEDERATION).

The Early Federalist Party.—The delegates who met in Philadelphia in 1787 were in general agreement as to the necessity of restoring public order and authority. For the most part they belonged to the aristocratic, governing group in their respective communities. If all were not men of property, their outlook was that of the property-owning class. All would have assented to the statement of one of their number who declared that "next to personal liberty, the preservation of property is the most sacred object which can be effected by government." To this end they drafted those provisions of the Constitution which secured the validity of debts contracted by the United States and which made treaties part of the law of the land, as well as those other clauses which forbade states to emit bills of credit or to enact laws impairing the obligation of contracts. Believing, with Randolph, that "the evils under which the United States labor have their origin in the turbulence and follies of democracy," the framers of the Constitution sought to combine a moderate participation of the people in the Government with a substantial control by the upper classes. From this point of view, the Constitution may be regarded as a reaction against democratic tendencies. As Professor Ford says, "The constitutional history of the United States begins with the establishment of the government of the masses by the classes" (*see* FEDERAL CONVENTION AND ADOPTION OF THE CONSTITUTION).

When the new Constitution came before the states for ratification, the provisions for the establishment of efficient federal government were the first to be attacked. All who feared the subordination of the states to this new government, all who feared to see a government established, one object of which, as Hamilton avowed, was to restrain the means of cheating creditors, and all who feared the loss of their local authority, set themselves against the Constitution. Anti-Federalism was their one common bond. All who favored the adoption of the Constitution, on the other hand, promptly and fearlessly assumed the name of Federalists. Though the contest was waged on thirteen already well scarred political battle-fields, the issue involved was continental in its significance, and arguments used in one convention were repeated in others. The Federalist leaders kept in touch through correspondence, while Hamilton, Madison and Jay coöperated in writing the ablest campaign documents—the papers in the *Federalist*. The party was composed of various elements. "The federal convention," John Adams declared, "was the work of the commercial people in the sea-port towns, of the planters of the slave-holding states, of the officers of the Revolutionary army, and the property-holders everywhere." But these classes, he added, could never have established the Constitution without the "active and steady coöperation of all that was left in America of attachment to the mother-country, as well as of the moneyed interest, which ever turns to strong government, as surely as the needle to the pole." A detailed study of the votes cast in the several state conventions confirms the substantial accuracy of this description. "The Constitution was carried in the original thirteen states," writes Dr. Libby, "by the influence of those classes along the great highways of commerce, the sea-coast, the Connecticut river, the Shenandoah valley and the Ohio river; and in proportion as the material interests along these arteries of intercourse were advanced and strengthened, the Constitution was most readily received and most cordially supported. In other words, the areas of intercourse and wealth carried the Constitution." To these supporters of the Constitution should be added a small group of men who were moved less by pecuniary considerations than by the promptings of national pride. These nationalists, who felt with Hamilton

that a nation without a government is an awful spectacle, contributed a strength to the Federalist party which was out of all proportion to their numbers.

Hamiltonian Federalism.—The adoption of the Constitution was the first great achievement of those calling themselves Federalists. Among them, however, were not a few who realized that it was "of little purpose to have introduced a system if the weightiest influence is not given to its first establishment." To this end Hamilton urged Washington to accept the presidency which everyone was ready to concede to him; and to this end the Federalist leaders interested themselves in securing the choice of John Adams as Vice-President. The first elections to Congress resulted in the choice of a majority friendly to the new Government. To the first Federalist administration belongs also the credit of setting up the Government and putting the wheels of Government in motion. So successful were the labors of Congress at its first session that Jefferson could write to La Fayette, "The opposition to our new Constitution has almost totally disappeared." In general the new government from Washington down deprecated party spirit and fondly hoped that in time all opponents of the Constitution would become reconciled to the new order. Jefferson, who had entertained misgivings about the work of the Federal Convention, was appointed Secretary of State and Edmund Randolph, who had actively opposed the new Constitution, became Attorney-General.

Meantime, as secretary of the Treasury, Hamilton had developed a systematic plan for the restoration of the public credit. Aspiring to play the role of a chancellor of the exchequer, he became, for a time, virtually premier in the little circle of Washington's advisers. In a series of masterly reports, he outlined the main features of his policy: the funding and payment of the foreign debt; the funding and payment at its par value of the domestic debt; the assumption by the Federal Government of the debts incurred by the states during the Revolution; an excise on spirituous liquors; and the incorporation of a national bank. In spite of vigorous opposition, especially to the assumption of state debts, this fiscal policy was eventually embodied in statutes. That political motives lay behind Hamilton's proposals was hardly disguised. Many Federalists believed that the country would not escape the dangers which beset the old confederation until the Federal Government had exercised certain powers to the exclusion of the states. Hamilton believed that the states should be circumscribed within their powers; he had frankly announced that he hoped "to cement more closely the union of the States;" he made no secret of his desire to give stability to the Government by enlisting the pecuniary support of the commercial and creditor classes; his predilection for the British constitution as the best in the world, because it gave to the rich and the well-born a privileged place in the Government was well known, moreover, in his opinion on the constitutionality of a national bank, Hamilton rejected the view of Jefferson which would have confined the National Government either to powers expressly granted, or to powers absolutely necessary to carry out the enumerated powers. There was another class of powers, he contended, which might be termed *resulting* powers (*see*). If the end to be gained by a measure was comprehended within the specified powers and the measure was obviously a means to that end and not forbidden by the Constitution, then it was clearly within the compass of the national authority (*see* CONSTRUCTION AND INTERPRETATION; IMPLIED POWERS).

Beginning of Opposition.—As the wide reach of Hamilton's policy became clear, men like Madison whose sympathies had hitherto been enlisted on the side of more efficient government, hesitated and then went into active opposition. The suspicious mind of Jefferson soon conceived a distrust of Hamilton and found daily confirmation of his fears of "consolidation." Before the first Congress ended, Washington's chief secretaries were hopelessly at odds and intriguing against each other. Jefferson became the natural leader of a growing opposition, which, though it doubtless contained many former Anti-Federalists, became the nucleus of a new party. The elections of 1792 disclosed a slight reaction against Hamiltonian Federalism. Although a decisive contest between the parties was averted by Washington's reluctant consent to serve a second term in the presidency, the followers of Jefferson had the satisfaction of reducing the vote of Adams for Vice-President by supporting George Clinton of New York, whose Anti-Federalism had been most pronounced. They won enough seats in Congress to secure control of the House, and they maintained their majority in the succeeding congressional elections. Washington began his second administration, therefore, under less happy auspices. Despite his abhorrence of party and party spirit, he had so consistently supported the policies of Hamilton that he was inevitably associated in the popular mind with the Federalist party. Circumstances now conspired to put him into direct antagonism to the followers of his Secretary of State, who were beginning to call themselves Republicans.

Federalism and Jacobinism.—The beginnings of the French Revolution had been followed with sympathetic interest on this side of the Atlantic. Americans thought they saw their own revolutionary struggle mirrored in the resistance of the French people to oppression. The war of France against Europe was regarded as a combat between republican and despotic principles. When Genet landed in

Charleston as the accredited minister of the new French Republic, he was greeted with wild enthusiasm. That this popular movement did not result in active intervention in the cause of France, was due to the wise determination of the administration to preserve neutrality. As the news of the excesses of Jacobinism reached the American press, public opinion underwent a revulsion, particularly among the Federalists of New England. Yet the Democratic clubs did not abate their noisy denunciation of the administration for turning a deaf ear to the summons of an old ally. Opposition reached the verge of treason when these Democratic organizations fraternized with the Whiskey Insurrectionists (*see* WHISKEY INSURRECTION) of Pennsylvania. Even Washington was moved to denounce those "combinations of men, who, careless of consequences, and disregarding the unerring truth that those who rouse cannot always appease a civil convulsion, have disseminated, from an ignorance or perversion of facts, suspicious, jealousies, and accusations, of the whole Government." The effect was two-fold: the Democratic clubs thus denounced, whether justly or not, fell into disfavor and the Democratic movement found vent in safer modes of opposition, while the hands of those who believed in the necessity of rearing strong bulwarks against anarchy, were strengthened. The last diplomatic stroke of the administration was the Jay treaty (*see*) with England (GREAT BRITAIN, DIPLOMATIC RELATIONS WITH). In spite of opposition, which was not wholly partisan, the treaty was ratified by the Senate and endorsed by the Republican House.

The presidential election of 1796 was the first important contest between the parties. In a sense, it was a referendum upon the work of the Federalist administration. It was generally agreed that Republican electors would vote for Thomas Jefferson (*see*) of Virginia and Aaron Burr (*see*) of New York, and that the Federalists would support John Adams of Massachusetts (*see*) and Thomas Pinckney of South Carolina, who was expected to secure the electoral vote of his state for the ticket. The South Carolina electors, however, divided their votes between Jefferson and Pinckney, and only unexpected votes in North Carolina and Virginia gave Adams the presidency. In New England, Pinckney failed to secure the full Federalist vote and the vice-presidency fell to Jefferson. Before the next presidential election, Charles Pinckney (*see*) had perfected the organization of the Republican party in South Carolina and had wrested the control of the state from the Federalists. The loss of South Carolina marked the Federalist party as a predominantly northern party.

The Federalist Schism.—Though the nominal leadership of the Federalist party belonged to President Adams, Hamilton continued to exercise a larger influence in molding party opinion than any other man. Between these men there was a temperamental difference which made coöperation impossible; and the President put himself in an awkward position by taking over Washington's Cabinet advisers who regarded Hamilton as their leader. At a time when foreign policy demanded the nicest care, the Federalists suffered from divided counsels. The initial move of President Adams in sending special envoys to deal with the French Directory, met with general approval. Unexceptionable, too, from the Federalist point of view, was the vigorous course of the President in the X Y Z affair (*see*). For the moment, and for the only time during his administration, John Adams led his party. Congress upheld the President's determination to resist further outrages at the hands of the Directory. A provisional army was authorized, of which Washington was to be commander, and the President was instructed to issue letters of marque and reprisal. But much to the President's discomfiture, he was forced to appoint Hamilton as the ranking major-general to whom the actual command of the Army in the field would fall. Not satisfied with these defensive measures, the Federalists forced through Congress the so-called Alien and Sedition Laws (*see*), which could be justified only on the plea of public necessity and the imminence of war. Though moderate Federalists cherished grave misgivings concerning this legislation, the congressional elections, held while the war fever was at its height, gave no evidence of public disapproval. On the contrary, the Federalists obtained a slightly larger majority in Congress.

Early in 1799 Adams determined to make further efforts to secure peace with France. Without consulting his Cabinet, he appointed and eventually despatched three envoys to treat with Napoleon. Patriotic and wise as this move undoubtedly was, it alienated Federalist leaders and widened the breach between the President and Hamilton. In the natural reaction against militarism which set in when the danger of war had passed, the moderate Federalists became consistent supporters of the President. It was by the combined votes of these moderates and Republicans that Congress authorized the President to suspend enlistments, and eventually to muster out the Army. President Adams completed the break with the northern wing of the party by dismissing both McHenry, who was completely subservient to Hamilton, and Pickering (*see*), who was the leading spirit of what was known as the "Essex Junto" (*see*). The secretaryship of state was then given to John Marshall (*see*), a leader among the moderate Federalists from the South.

Fall of the Federalist Party.—The Federalist candidates in the election of 1800 were John Adams and Charles C. Pinckney of South Carolina; the Republicans again united upon Jef-

ferson and Burr. Early in the year, the Republicans secured control of the legislature of New York and were thus assured of the twelve electoral votes of that hitherto Federalist state. Yet the Federalists counted on enough votes from the middle states and from the Carolinas to offset this initial loss. New England was staunchly Federalist. But the Federalists of South Carolina were unable to redeem their promise and the eight electoral votes of that state went to Jefferson and Burr. The outcome was a decisive defeat for the Federalist candidates; but the Federalist members of Congress had the grim satisfaction of expressing their choice between Jefferson and Burr, for each had received seventy-three votes and by the terms of the Constitution the eventual choice devolved upon the House of Representatives, which was controlled by the Federalists.

In stating the causes for the down-fall of the Federalist party too much weight has been attached to the divided counsels of the party. It is impossible to demonstrate that factional quarrels lost the vote of either New York or South Carolina. It is possible, however, to point out a growing popular resentment, as the Government pressed its prosecutions for libel under the terms of the Sedition Law. The Virginia and Kentucky Resolutions (*see*) undoubtedly gave direction to public opinion by denouncing this encroachment of the Federal Government upon the domain of individual liberty. Federalism never struck root deeply in the frontier areas of the new West. It laid no hold upon the popular imagination. On the contrary, Federalist leaders made no secret of their distrust of the political capacity of the lower classes. The Federalist party was unlike any other American party in that it was essentially aristocratic in tone; and to this extent it was un-American and carried the seeds of its own destruction. No one saw more truly the inherent weakness of the party than Alexander Hamilton. Writing in 1802 on the means of rehabilitating the party, he declared that the Federalists had trusted too much to the rational appeal of their policies and had neglected to cultivate popular favor. "Men are rather reasoning than reasonable animals," he wrote, "for the most part governed by the impulse of passion. This is a truth well understood by our adversaries, who have practised upon it with no small benefit to their cause."

Federalists in Opposition.—Yet if the Federalist leaders had possessed the highest wisdom which learns from defeat, the party might have broadened its basis and have played a useful part in American government. Only those who discover a definite "mission" for a party and conceive that a party should disappear when it has performed its task, will acquiesce in the view that the Federalist party had finished its natural term of life by the year 1800. Other American parties have continued to exist and to perform important functions in opposition when retired from power. The Federalist leaders, however, could not become reconciled to government by their opponents. To their minds the government which they had established had fallen into the hands of its avowed enemies. "The Democrats," said Fisher Ames, "really wish to see an impossible experiment fairly tried, and to govern without government." Instead of endeavoring to reconstruct their party, the leaders either retired to private life in deepest dejection, or became bitter and often inconsistent critics of Republican policies and themselves advocates of opportunist policies.

In the hour of defeat, the Federalists still further forfeited public confidence by an unworthy effort to bring Burr into the presidency over the head of Jefferson. The Judiciary Act passed by the expiring Federalist Congress also discredited the party, for however much an extension of the federal courts may have been needed, the Federalists undoubtedly aimed to intrench themselves in the judiciary and so to impose a check upon the Republicanism of the elective branches of the Government. The opposition of the Federalists to the acquisition of Louisiana and their jealousy of the growing power of the West, put them still further out of touch with the current of national life. When the admission of Ohio and Louisiana to statehood could seem to New England Federalists to justify a dissolution of the Union, the decay of the party as a national organization is obvious. In the presidential election of 1804, only Delaware and Maryland of the middle states cast any electoral votes for the Federalist candidates. In the states south of the Potomac, the Federalist party was becoming only a political reminiscence.

New England Federalism.—The further history of the Federalist party is largely the history of New England sectionalism. Within the broad current of unremitting opposition to Thomas Jefferson and his policy of peaceable coercion of European powers, are many wayward movements connected with the intrigues of Pickering and his friends of the Essex Junto which hardly belong to the history of party. The embargo was persistently regarded by the commercial classes as an attack upon their interests, in behalf of Virginia and other agricultural states. That the policy was motived also by hatred of New England and regard for France, was not doubted by those who esteemed Jefferson as no better than a French Jacobin. The Federalist remnant in Congress united with John Randolph (*see*) and the Quids (*see*) to embarrass the administration at every turn. It was now the Federalists who posed as defenders of the Constitution against the assumption of undelegated powers by the federal executive. By the summer of 1808, the embargo had become so unpopular that a politi-

cal revolution seemed imminent. Federalist successes in Massachusetts and New York moved Gallatin to write, "from present appearances the Federalists will turn us out by 4th of March next." But the failure of the Federalists to form a coalition with DeWitt Clinton, who controlled the Democracy of New York, forced them again to name Charles C. Pinckney and Rufus King as their candidates, who, while they made notable gains in New England and secured three electoral votes in North Carolina, could not carry New York nor detach Pennsylvania from its alliance with Republican Virginia.

When Jefferson's policy of peaceable coercion finally gave way to non-intercourse and then to war, the Federalists of New England openly declared that both Jefferson and Madison were sold to France and that the commercial interests of New England were being wantonly sacrificed. The election of 1812 occurred amid military reverses and factional quarrels within the Republican party. Joining hands with the Republican malcontents, the Federalists gave their support to DeWitt Clinton of New York, who had raised the standard of revolt. This coalition carried all of New England except Vermont, New York, New Jersey, Delaware and five electoral votes in Maryland. Only the steadfast republicanism of Pennsylvania saved Madison from defeat.

Disappearance of the Federalist Party.—Despite the political revival of 1812, the days of the Federalist party were numbered. Four years later, no efforts were made to nominate candidates in opposition to Monroe. The Federalist electors who were chosen in Massachusetts, Connecticut, and Delaware cast their votes for Rufus King. In the election of 1820 the Federalists had no candidates and cast no electoral votes. The disappearance of the party has been variously explained. The implacable opposition of the leaders to the war and the treasonable designs of certain Federalists belonging to the Essex Junto, which culminated in the Hartford Convention (*see*), doubtless discredited the party even in New England. The party, indeed, had lost its coherence. From a national organization, it had become a sectional faction with narrow outlook. Always drawing its chief support from the commercial class, it had become exclusively the organization of a social class backed by the influence of the orthodox clergy. The nationalist elements had been drawn into the Republican party whose policies were becoming more and more nationalistic. Moreover, New England was becoming a manufacturing section. The restrictive system of Jefferson and Madison had turned capital from shipping to manufacturing. War had stimulated this development; and with the return of peace, the Republican party had so far departed from Jeffersonian principles that it offered protection to the nascent industries. The Federalist party was not so much destroyed as absorbed by the Republican party, which had become nationalized by pressure both from without and from within its own organization.

See ANTI-FEDERALIST; DEMOCRATIC-REPUBLICAN PARTY.

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FEEBLE MINDED, PUBLIC CARE OF. The care of the feeble minded is now generally recognized as a duty of the state. The term feeble minded is not exact. Scientists have defined eleven different varieties or grades of feeble mindedness. It is lexically defined as "deficient in intellect; imbecile; idiotic." In practice, children who are so dull as to be unable to make progress in school, and who have not sufficient mental power to protect themselves and to transact simple business, are classed as feeble minded.

There has never been a correct census of the feeble minded. The United States Census of 1890 reported cases recognized by unskilled observers to the number of 95,609, or one in 655 of the population. In 1908, the English Royal Commission reported for England, one feeble minded person in 217; for Scotland, one in 400; and for Ireland, one in 175. Dr. Edward R. Johnstone, an expert authority, holds that one in 300 is more nearly correct for the United States.

In 1904 the Census Bureau reported 16,551 "supposedly feeble minded persons among the inmates of almshouses." It is generally agreed that all feeble minded persons should be cared for in institutions for defectives: (1) as a matter of humanity in view of their helpless condition which makes a special claim upon the compassion and kindness of the community; (2) because of the importance of relieving families from the great burden of the care and responsibility for the feeble minded child; often the greater part of the time and energy

of the mother is given to the care of such a child and even then it is impossible for her to make adequate provision for it; (3) as a measure of protection to the community.

Dr. Johnstone has listed 28,870 feeble minded persons or less than one-sixth of the feeble minded population of the United States in 31 state and 22 private institutions for defectives in the United States, as follows:

State	Number
California	999
Colorado	50
Connecticut	295
Illinois	1,254
Indiana	1,391
Iowa	1,391
Kansas	918
Kentucky	385
Maine	230
Maryland	13
Massachusetts	2.627
Michigan	1,050
Minnesota	1,500
Missouri	528
Montana	54
Nebraska	451
New Hampshire	108
New Jersey	1,908
New York	5,563
North Dakota	163
Ohio	3,161
Oregon	193
Pennsylvania	3,141
Rhode Island	50
South Dakota	174
Tennessee	12
Texas	385
Virginia	74
Washington	160
West Virginia	157
Wisconsin	1,015

Dr. Johnstone says that recent studies make it evident that from 60 to 90 per cent of cases cases of feeble mindedness are hereditary. The majority of feeble minded women become mothers and the larger part of their progeny are, in their turn, defective. Dr. Henry H. Goddard, has brought out the fact that feeble minded women are on the average, twice as prolific as normal women. As a result, the feeble minded are multiplying with frightful rapidity. Such women become a source of corruption for multitudes of boys and young men.

Recently there have been instituted psychological tests of children, young men and young women in public reformatories and it has been estimated that at least 25 per cent of the persons committed to such institutions are properly classed as feeble minded. It is generally agreed that the only proper method of preventing the multiplication of this class of dependents is by their segregation in institutions where they may be kept safe and happy and where they may be so employed as to contribute in a large degree toward their own support.

Nearly all of the institutions for feeble minded children began with young children of school age. It was expected that by improved educational methods, by the employment of trained teachers and by the use of extra time, the latent faculties of these children could be developed to such a degree that they would become self-supporting. These expectations have been disappointed. A small number of children have gone out from the institutions, but few of them have been able to take care of themselves, and most of them have drifted back, while the larger proportion has grown up to manhood and womanhood in the institutions. It has become necessary to make special provision for this older class and this has been done by the establishment of farm colonies which give opportunity for a happy outdoor life and afford employment suited to their limited capacities. At Vineland, N. J., and Bedford, N. Y., there have been provided such institutions for the care of feeble minded women of child bearing age. The Virginia legislature of 1912 passed a law providing for institutions for feeble minded children with a special provision that admittance shall first be given to women between the ages of 13 and 45.

See Defective Classes, Public Care of.

References: C. B. Davenport, *Heredity in Relation to Eugenics* (1911); Journal of Psycho-Asthenics (1895 to date); Anne Moore, *Report on Feeble-Minded in New York* (1911); Nat. Assoc. for the Study and Education of Exceptional Children, *Proceedings* (1910 to date); H. H. Goddard, Trans., *Binet-Simon Measuring Scale for Intelligence* (1910); W. S. Cornell, *Backward Children in the Public Schools* (1908); E. L. Dugdale, *"The Jukes" A Study in Crime, Pauperism, Disease and Heredity* (1884); Mrs. E. G. Evans and Miss M. W. Dewson, *Feeble-mindedness and Juvenile Delinquency* (1908); A. F. Tredgold, *Mental Deficiency (Amentia)* (1908); "Binet Tests, Symposium" in *Psychological Clinic,* December 15, 1911; Philadelphia Board of Public Education, Report of Committee on *Backward Children Investigation,* 1911; Nat. Conf. of Char. and Correction, *Proceedings* (1874 to date); H. H. Goddard, *Heredity of Feeble-mindedness* (1911); Great Britain Royal Commission on the Care and Control of the Feeble-minded, *Reports and Minutes of Evidence,* 1908; E. B. Huey, *Backward and Feeble-Minded Children: Clinical Studies in the Psychology of Defectives* (1912); Philadelphia Department of Public Health and Charities, *Bulletins on Adequate Provision for the Feeble-Minded* (1910 to date); U. S. Bureau of the Census, *Insane and Feeble Minded in Hospitals and Institutions* (1904); Edward Seguin, *Idiocy and Its Treatment by the Physiological Method* (1907); Nat. Conf. on Education of Backward, Truant, Delinquent and Dependent Children, *Proceedings,* 1904; W. W. Ireland, *Mental Affections of Children: Idiocy, Imbecility and Insanity* (1900); L. P. Ayres, *Laggards in our Schools* (1909); M. W. Barr, *Mental Defectiveness: History, Treatment and Training* (1904); Lightner Witmer, *Special Class for Backward Children* (1912); H. H. Hart, *Extinction of the Defective Delinquent* (1913); *Am. Year Book, 1910,* 472, and year by year.

Hastings H. Hart.

FEES AND THE FEE SYSTEM

Distinctions.—It has long been common to compensate certain officers or certain kinds of official service by fees rather than by salaries. In general, three classes may be distinguished: (1) When the service rendered is one by which a particular individual is especially benefited even though a public interest may also be involved, it is appropriate that the chief burden of the expense should fall on the immediate beneficiary. (2) Fees may be used as a means of restricting or controlling certain kinds of business, *e. g.*, liquor traffic, street peddlers, etc.; (3) When the duties of an officer are light or irregular his compensation may more equitably be in the form of fees for work actually performed rather than a salary, or his salary may be supplemented by fees for certain services incident to the office.

Amount of the Fee.—The amount of the fee that is charged is in most cases fixed arbitrarily without much reference to the cost of the service that the government renders or the value of that service to the recipient. Certain considerations are, however, taken into account. If the service rendered is one which may be a direct source of profit to the beneficiary, as the granting of a patent, or a licence to engage in a particular business, the charge may be relatively high. Especially may the fee be high if the business is one (*e. g.*, the liquor traffic) which the government desires to restrict. But on the other hand the fee for a marriage licence should not be so high as to constitute an obstacle to marriage, nor should the fees in the courts be sufficient to prevent a resort to them for protection when there is good cause. The deleterious public effects of excessive fees may be seen in England where the cost of the transfer of land from one owner to another is so high as to constitute a serious impediment to its free sale.

Objection to the System.—The fee system is open to serious objections. It often constitutes a direct incentive to an official to neglect his duty to the public. The issuance of marriage licences is conditioned in many states upon the fulfillment of certain requirements which are intended to prevent the marriage of persons whose union the state is not willing to sanction. Whether these conditions have been complied with is usually determined by the officer who grants the licence; and since in most states the license fee is his perquisite, he has a strong inducement to take a lenient view of the matter. A conscientious officer who enforces the law and refuses to grant a license is punished by the loss of his fee. It is not strange, therefore, that a marriage licence is seldom refused.

In dealing with tramps and vagrants the fee system has bad effects. In many states it is to the direct interest of the public officer to have as many tramps brought up for trial as possible, for the judge and every other officer participating in the case receives a fee for each. It is but natural that the judge should welcome the profitable tramp to his court, and in some states it has been necessary to enact laws to prevent conspiracy between the judge and the tramps for defrauding the public. The sheriff or jailer is further interested in tramps in those states which provide that so much per head shall be paid those officers for the maintenance of each tramp in the jail. The larger the number the greater the profits of their host, and the greater the inducement to him to make the jail attractive to its occupants. Some jails are widely known among tramps for their superior accommodations. The matter is easily remedied, however, by depriving the sheriff of all financial inducement to increase the population of the jails in his charge.

Effects on the Courts.—In the administration of justice some of the worst effects of the fee system are seen. The lowest judicial officer, the justice of the peace, is almost always paid by fees. In many cases this is proper, but wherever there are two or more justices who are competing with each other for business, the effect of the fee system is harmful to the public. A lawyer will take his case to that justice who is most likely to favor him. If one justice disappoints him he transfers his business to another justice, and the first one is punished by the loss of fees which he might otherwise have had. In many cities this situation is a notorious scandal. The administration of justice is also injured by the fee system in those states which compensate the prosecuting officer by a fee for each conviction which he obtains. Thus in California he is given $50 for each conviction of a capital offense, $25 for each conviction of a felony, and $15 for each conviction of a misdemeanor. This is open to two objections. If the prosecutor has instituted proceedings in a case where there was probable guilt but which results in acquittal, he should be compensated for his labor. On the other hand, if a person suspected of crime is willing to pay the prosecutor more for taking no action than the state will pay for a conviction, the prosecutor is exposed to a temptation to which the law ought not to subject him.

In many instances the fees of an office amount to so large a sum as to make it an object of intense competition and of years of plotting. The fees attached to the office of

consul general in London before it was put on a salary basis were said to amount to $100,000 per year, thus making it the richest post within the gift of the President. The office of sheriff in a populous county is especially lucrative, ranging in many cases from $25,000 to $125,000 annually. Such an office is so rich a prize that those who are striving for it are ready to make any political deal, contribute liberally to the party funds, and even resort to open corruption to secure the election or appointment.

Opposition to Abolition.—It is the rich return from offices of this kind which accounts for the continued existence of the fee system. Any attempt to compel a sworn, public statement of the amount of the fees received, and, much more, any attempt to put these offices on a salary basis, is strenuously resisted by those who are profiting or expecting to profit from them. Their opposition is usually successful, for the public seldom has any definite knowledge of the amount of the fees collected, and furthermore, most of the public never pay any fees and hence feel no direct interest in the matter.

There are many officers whose duties are light and intermittent who may properly be compensated by fees. But every officer should be required to make a sworn public statement annually of all fees collected, and in the light of that statement it could then be determined whether the system should be continued or a salary substituted.

See SALARIES.

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FELLOW-SERVANT DOCTRINE. **See** EMPLOYERS' LIABILITY.

FELONY. The original common law meaning of this term was the state of having forfeited one's property to the crown upon conviction of an offense punishable by such forfeiture and any additional punishment prescribed by law; but by transition it has come to mean an offense so punishable. In America the term is variously applied to certain of the graver offenses, except in some states where it is defined by statute. In many states, felonies are defined by statute as offenses punishable by death or by confinement in the state penitentiary. **Reference:** Bannon *vs.* United States, 156 *U. S.* 464. H. M. B.

FERRIES. The ferry is an ancient institution. For centuries oars and sails were used; then came the "flying bridges," overhead cables and under-the-water chains and other devices for drawing the boat over its course; steam ferries date from 1825. Ferries have been used considerably for transporting railway cars and trains especially about New York. On the Great Lakes and in Siberia, there are train ferries thirty to sixty miles long, utilizing powerful icebreaking ferryboats.

Law.—A ferry is a grant from the sovereign power of the state and is classed among incorporeal hereditaments and, therefore, subject to the law of real property as to descent and transfer. This principle is recognized in England and in most of the American states. The grant can be acquired only by direct legislative authority or through an agent of this authority such as a municipality or a court. The owner of the grant is bound to serve the public faithfully and impartially; he must have suitable equipment and reasonable tolls. His liability is the same as a common carrier's. In contemplation of law a ferry is a continuation of a highway, and the person operating it is subject to action for damages, forfeiture of franchise and criminal prosecution in case of neglect of duty.

Leased Ferries.—Municipal ownership of ferry privileges is not frequent and municipal operation is still more rare. Abroad, perhaps a score of ferries owned by municipalities and leased to private concerns may be found, particularly in Holland, Germany and England. In the United States ferry rights were leased or sold in St. Louis, New Orleans and New York until 1905. New York was long a striking example of leased ferry systems, beginning in 1811, Robert Fulton being one of the first lessors. These franchises, about the middle of the century, became subject to corruption the city council being repeatedly bribed to grant special privileges. With the Greater New York charter which took effect January 1, 1898, the ferry system was reorganized and companies were forced to pay the city a reasonable share of their earnings, in some instances over a hundred times the amount they had formerly paid. The experience of the city proved that the ferries could be leased at a good profit to all parties.

Municipal Ferries.—Municipal ownership and operation has been tried in three countries at least, England, Russia and the United States. The Birkenhead ferries in England handle over 25,000 people daily, at a fare of two cents, and, after proper reserves for depreciation and sinking funds have been set aside, the profits are considerable. In the United States, Boston and New York have carried on unsatisfactory experiments with municipal operation. The net loss from 1870 to 1910 on the operation of the East Boston ferries has been over four millions of dollars, while the patrons are no better satisfied than they were in 1852. The experience of New York since 1904 has been similar. The former lessors, realizing the serious inroads which the tubes and bridges of the future would make into their profits, sold the city their property at more than its then operating

value, and since the sale New York has been paying for its hasty bargain at the rate of nearly a million dollars dead loss per year.

Municipal operation of ferries in the United States under present political conditions, appears to be a hazardous experiment financially. Supplying free, or very low, ferry service to certain sections on the principle that roads are free to other sections, has not proved equitable to the city at large; and unless a practical scheme of differential tax rates can be worked out, ferry expenses including sinking funds and depreciation should be fully met by tolls.

See BRIDGES; HARBOR SYSTEMS; RIVERS, JURISDICTION AND NAVIGATION OF; ROADS; TRANSPORTATION, ECONOMIC PRINCIPLES OF.

References: William C. Glen, *Law Relating to Highways, Bridges and Tramways* (2d ed., 1897); E. Washburn, *Treatise on the American Laws of Real Property* (1902); *Revised Laws of Massachusetts*, (1902), ch. lv; N. Matthews, *City Government of Boston* (1885); Harvey S. Chase, "Reports to the Mayor of Boston, 1902" in *City Doc.*, No. 62 (1902); Comptroller of New York City, *Reports; Fabian Tract*, No. 97 (1907); G. Myers, "Ferry Franchises in New York" in *Municipal Affairs*, March, 1900; M. R. Maltbie, "Municipal Ownership of Ferries" in *ibid*, Dec., 1898.

STUART CHASE.

FESSENDEN, WILLIAM PITT. William P. Fessenden (1806–1869) was born at Boscawen, N. H., October 16, 1806. In 1827 he was admitted to the bar, and shortly afterwards settled at Portland. He declined a nomination to Congress in 1831 and again in 1838, but sat in the state legislature in 1832 and 1840, and in the latter year was elected to Congress as a Whig, serving one term. In 1845–46 and 1853–54 he was again in the legislature. In 1854 he was elected United States Senator by the votes of the Whigs and anti-slavery Democrats, and held his seat until 1864. He was one of the most brilliant opponents of the Kansas-Nebraska bill, the Lecompton constitution, and the Dred Scott decision, and a leader in the formation of the Republican party. During the Civil War he was chairman of the Senate committee on finance, but opposed the issuance of legal tender notes. In July, 1864, he succeeded Salmon P. Chase as Secretary of the Treasury, resigning in March, 1865, to accept a reëlection to the Senate. He resumed the chairmanship of the committee on finance, and was a member of the joint committee on reconstruction. On the impeachment of Johnson, however, he broke with his party and voted for acquittal. He died at Portland, September 8, 1869. See REPUBLICAN PARTY; TREASURY DEPARTMENT. Reference: F. Fessenden, *Life and Public Services of William Pitt Fessenden* (1907).

W. MACD.

FIAT MONEY. Money made legal tender by a mere fiat or decree of the government and not based upon coin, bullion, or an intrinsic value equal to its face value. A theory of money held by the Greenback party (*see*) which had its rise during the period 1866 to 1876. See PAPER MONEY.

O. C. H.

FIFTEENTH AMENDMENT

1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

The Fifteenth Amendment to the Constitution of the United States brought forward as a necessary supplement to the second section of the Fourteenth (*see*). When that section was being considered in committee, almost the exact language of the Fifteenth Amendment was favored by a minority whose suggestions, however, were set aside for the words finally used. The adoption of an additional amendment was deemed necessary to prevent the southern states from abridging the right of suffrage of the freedmen, to secure the same right in the states which had not seceded, to obtain for the federal courts the jurisdiction in cases of offences against its provisions, and to aid in assuring the continued domination of the Republican party at a critical juncture in its history. A long discussion in Congress preceded the final definite phrasing of the amendment. The amendment was proposed February 26, 1869, and passed the Senate 39 to 13. On the previous day it passed the House 144 to 40—thirty-five members not voting. When it went before the states, Tennessee took no action upon it. It was rejected by California, Delaware, Kentucky, Maryland, New Jersey and Oregon. Georgia and Ohio at first rejected and then ratified it. New York at first ratified it and then rescinded its action. It was declared in force from March 30, 1870, the official certificate of the Secretary of State announcing that twenty-nine states, being three fourths of the whole number, had ratified it, and mentioning without comment the action of the legislature of New York which claimed to withdraw its previous ratification.

Its promulgation was attended by exceptional features. One was a special message from President Grant which stated that the adoption of the amendment completed the greatest

civil change and constituted the most important event that had occurred since the nation came into life. Another was a special vote passed by the House on July 11, 1870, by 138 to 32, declaring the Fourteenth and Fifteenth Amendments valid as part of the Constitution, binding and obligatory upon the executive, the Congress, the judiciary, the several states and territories and all citizens of the United States. In view of the wide diversity of public opinion reflected in state party platform resolutions these two unusual acts seemed to emphasize the political character of the amendment and its doubtful constitutionality. The limitation of the right of the states to determine qualifications for suffrage, the fact that some states ratified under duress, the questionable legality of some of the ratifying legislatures, and the counting of New York as a ratifying state, in spite of its later action, are important in this connection.

The amendment has become a dead letter in actual administration. Educational, property and other qualifications, considered clearly within the right of a state to impose, having accomplished their purpose without necessary trenching upon "race, color or previous condition of servitude." The attitude of the Supreme Court in several decisions has been unfriendly. Public opinion, generally, has regarded the amendment as a great political blunder, which hindered rather than helped the progress of the colored people.

See Negro Suffrage; Reconstruction; Republican Party; Suffrage.

References: *House* and *Senate Journals*, 40 Cong., 2 Sess. (1869); E. McPherson, *Pol. Hist. of U. S. During Reconstruction* (1871), 488–498, 545–562; J. D. Richardson, *Messages and Papers*, VII (1898), 55–57; J. F. Rhodes, *Hist. of U. S.* (1906), VI, 201–204; W. A. Dunning, *Reconstruction, Political and Economic* (1907), 135, 174–186, 261–263, *Essays on Civil War and Reconstruction* (1898); W. D. Foulke, *Oliver P. Morton* (1899), ch. v; *Appleton's Annual Cyclopaedia* (1869), 12 *et seq.*; J. C. Rose, "Negro Suffrage: The Constitutional Point of View" in *Am. Pol. Sci. Review*, I (1906), 17–43; Pope *vs.* Williams, 193 *U. S.* 621.

F. W. Shepardson.

FIFTY-FOUR FORTY OR FIGHT. The Democratic rallying cry during the presidential campaign of 1844, growing out of the dispute with Great Britain over the Oregon question. The Democratic platform asserted that the title to "the whole of the territory of Oregon" which extended to the line of 54° 40′ north latitude resided unquestionably in the United States Government. See Annexation; Boundaries of the United States, Exterior; Democratic Party.

O. C. H.

FILIBUSTERING IN LEGISLATION. Filibustering as a term of parliamentary procedure has reference to the methods by which the proceedings of a legislative body may be delayed or obstructed for party or factional purposes. The usual methods by which such proceedings may be obstructed by the minority are the following: (1) by the interposition of dilatory motions; (2) by breaking a quorum through the refusal of members to answer to the roll or to vote. The abuse of the first method became serious in the House of Commons in the early eighties through the obstructive tactics of the Irish Nationalists under the leadership of Parnell (*see* Closure). During the consideration of the coercion bill in 1881 after many hours of useless debate had been consumed in the discussion of the measure, the speaker resolved to take heroic action to put a stop to what had come to be an intolerable evil. His action consisted in refusing to entertain any further dilatory motions, declaring that "the dignity, the credit and the authority of the House are seriously threatened and it is necessary that they should be vindicated."

The House of Commons thereupon adopted a rule which provided for a method of closing debate. With some alteration this method lasted till 1887 when the closure rule was passed, providing for the employment of the previous question to suppress debate and bring the House to a vote, by the introduction of the "guillotine" procedure and (later) by the method of "closure by compartments."

Remedies.—In the United States House of Representatives, prior to 1890, obstruction by dilatory motions was frequently resorted to by the minority and during the years immediately preceding, it came to be a serious abuse. The time of the House was wasted and the power of the majority to control legislation was seriously threatened. The particular methods most commonly employed for this purpose were motions to adjourn to a certain day, and to take a recess. Both motions were subject to two amendments upon each of which, as well as upon the original motion, the yeas and nays could be demanded by one-fifth of the members present. These motions could be repeated without limit and the time of the House wasted in useless roll calls. On one occasion in the Fiftieth Congress, says Mr. Dalzell, the House remained in continuous session for eight days and nights during which time there were over 800 roll calls on motions to adjourn and to take a recess. The reading clerks became so exhausted that members with large voices and strong lungs were called upon to take their places. Under the usages of parliamentary procedure, the Speaker undoubtedly possessed the power to refuse to entertain dilatory motions or such as were clearly intended to obstruct the procedure of the House, but the power had not been vigorously exercised by the presiding officers. The action of Speaker Reed, in 1890, in announcing

that he would henceforth refuse to entertain such motions marked the beginning of a new epoch in the history of the parliamentary procedure of the House and the practice thus established has been embodied in the rules of each succeeding Congress. The present rules as revised in 1911, declare that no dilatory motion shall be entertained by the Speaker (Rule XVI, Sec. 10).

Refusal to Answer.—The other method of obstruction frequently resorted to by the minority in the House of Representatives before 1890 was by breaking a quorum through refusal to answer the roll call or to vote. One of the earliest rules was that which required all members present to vote upon every question in which they had no direct interest unless excused by the House, but the few attempts made to enforce the rule were unsuccessful. Prior to 1890 it was the practice of the House to determine the presence of a quorum not by actual count, but by a roll call. In the course of time the minority came to employ this rule for purposes of obstruction. When a measure to which they objected was under consideration, they would order the yeas and nays and when the roll was called, refuse to respond though remaining in their seats. If the roll call showed the lack of a quorum, the measure would fail even though nine-tenths of the members were actually in their seats. Notwithstanding the abuse of the practice, successive speakers, Republicans and Democrats alike, declined to intervene. It remained for Speaker Reed, in the Fiftieth Congress, to put an end to the absurdity by ruling that physical presence and constructive absence were inconsistent and that when an actual count showed a quorum, a quorum should be declared, regardless of the showing on the roll call. On a notable occasion in January, 1890, when the roll call showed 161 yeas, 2 nays, and 165 not voting, he directed the clerk to record the names of those present and not voting. This action aroused a storm of protest among the members of the minority but it was sustained by the House upon an appeal from the Speaker's decision. This sensible rule has since been followed and it may now be regarded as a well-established principle of American parliamentary procedure.

See Closure; Congress; Debates in Legislatures; Previous Question; Rules; Speaker.

References: J. Dalzell, "Rules of the House of Representatives" in *The Independent* (1910), 577–582; M. P. Follett, *Speaker of the House of Representatives* (1902), ch. vii.; A. L. Lowell, *Government of England* (1908), I, ch. xv.

James W. Garner.

FILIBUSTERS TO AID INSURRECTIONS. The attitude of the people of the United States toward liberty made it easy for neighboring communities to enlist sympathy for movements toward greater freedom in political affairs, and the extent of boundary and coast line has made it physically possible for subjects of the United States to aid in these movements. Expeditions have been organized to aid all kinds of uprisings in neighboring communities. These men, who in disregard of international law have organized for the purpose of promoting revolution in a state with which their own is at peace, have, during the nineteenth century frequently been called filibusters.

These filibustering expeditions have been the subject of many diplomatic negotiations between the United States and the states whose territory is near. The Miranda expedition organized in the United States in 1806 against Spanish possessions in South America was similar to expeditions fitted out in European ports for the same purpose.

The expedition of Lopez from New Orleans against Cuba in 1850–1, those of Walker against the Mexican state of Sonora in 1853–4, and against Nicaragua in 1855–58, are among the best known. The fitting out of illegal military expeditions by Genêt in 1793 led the United States to enunciate a very definite statement in regard to neutrality (*see*) in 1793, which was followed by the Neutrality Act of 1794, amplified in 1818, and these acts have had great influence in crystalizing opinion upon the subject. The present law (*U. S. Rev. Statutes*, 5,286) under which the United States prohibits filibustering, provides that any person fitting out a military expedition against a friendly state or people is guilty of a high misdemeanor and liable to a fine not exceeding $3,000 and imprisonment not exceeding three years.

See Belligerency; Central America, Diplomatic Relations with; Cuba and Cuban Diplomacy; De Facto Government; Insurgency; Intervention; Neutrality, Principles of; Recognition of New States.

References: J. B. Moore, *Digest of Int. Law* (1906), III, 178–184, VII, 908, 934; F. E. Chadwick, *Relations of the U. S. and Spain* (1909), I, 238, 412–418; bibliography in A. B. Hart, *Manual* (1908), § 191.

George G. Wilson.

FILLMORE, MILLARD. Millard Fillmore (1800–1874), thirteenth Pre ident of the United States, was born at Locke (now Summer Hill), N. Y., February 7, 1800. He was admitted to the bar at Buffalo in 1823, and until 1830 practiced at Aurora. He joined the Anti-Masonic party, and from 1829 to 1830 was a member of the legislature. In 1832 he was elected to Congress as a Whig, serving from 1833 to 1835 and 1837 to 1843. He was chairman of the Ways and Means Committee which drafted the tariff act of 1842. He was opposed to slavery, and supported J. Q. Adams in the struggle over the right of petition. In 1844 he received the Whig nomination for governor

of New York, but was defeated by Silas Wright. During 1848 he was state comptroller. In the same year he was nominated for the vice-presidency by the Whigs on the ticket with Taylor, and elected. On the death of Taylor, July 9, 1850, he became President. He had favored the compromise measures of 1850, and approved the bills, being advised by Webster, Secretary of State, and Crittenden, Attorney-General, that the Fugitive Slave Act was constitutional. He sought a nomination in 1852, but was unsuccessful. In 1856 he was nominated for President by the American party, at Philadelphia; but although his popular vote was 874,000, he received only the eight electoral votes of Maryland. He lived at Buffalo until his death, March 7, 1874. See American Party; Compromise of 1850. **References:** F. H. Severance, "Millard Fillmore Papers" in Buffalo Historical Society, *Publications*, X, XI (1907); I. Chamberlain, *Biography of Millard Fillmore* (1856).

W. MacD.

FINALITY MEN. A name applied by the Free-Soilers, 1850–1854, to those who attempted to hush the slavery agitation and who considered that the Compromise of 1850 (*see*) had forever settled the slavery controversy. See Free Soil Party.

O. C. H.

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